TITLE 29.—LABOR

Chap. Sec.

16. Vocational Rehabilitation and Other Rehabilitation Services [New] 701

17. Comprehensive Employment and Training Programs [New] 801

18. Employee Retirement Income Security Program [New] 1001

Chapter 1.—LABOR STATISTICS

§ 9a. Credit of receipts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 216 of this title.

Chapter 4.—VOCATIONAL REHABILITATION OF PERSONS INJURED IN INDUSTRY

§§ 31 to 41c. Repealed. Pub. L. 93–112, title V, § 500(a), Sept. 26, 1973, 87 Stat. 390.

Section 31, acts June 2, 1920, ch. 219, § 1, 41 Stat. 735; June 5, 1924, ch. 265, 43 Stat. 431; June 9, 1930, ch. 414, § 1, 46 Stat. 524; June 30, 1932, ch. 324, § 1, 47 Stat. 448; July 6, 1943, ch. 190, § 1, 57 Stat. 374; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 652; Nov. 8, 1965, Pub. L. 89–333, § 2(a), 79 Stat. 1282; Oct. 3, 1967, Pub. L. 90–99, § 2, 81 Stat. 250; July 7, 1968, Pub. L. 90–391, §§ 2, 7(c), 82 Stat. 298, 300; Dec. 31, 1970, Pub. L. 91–610, § 1, 84 Stat. 1817, related to grants to assist in rehabilitating handicapped individuals, providing in subsec. (a) authorization to make grants and a statement of purpose and in subsec. (b) authorization of appropriations.

Section 32, acts June 2, 1920, ch. 219, § 2, 41 Stat. 735; July 6, 1943, ch. 190, § 1, 57 Stat. 374; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 652; Nov. 8, 1965, Pub. L. 89–333, § 2(a), 79 Stat. 1282; July 7, 1968, Pub. L. 90–391, §§ 3, 4, 5, 82 Stat. 298, related to grants to States for vocational rehabilitation services, providing in: subsec. (a) for computation of allotments; subsec. (b) for amount of payments and adjusted Federal shares; and subsec. (c) for private contributions for construction or establishment of facilities.

Section 33, acts June 2, 1920, ch. 219, § 3, 41 Stat. 736; June 5, 1924, ch. 265, 43 Stat. 431; June 9, 1930, ch. 414, § 2, 46 Stat. 524; June 30, 1932, ch. 324, § 2, 47 Stat. 449; July 6, 1943, ch. 190, § 1, 57 Stat. 376; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 654; Nov. 8, 1965, Pub. L. 89–333, § 2(a), 79 Stat. 1283; July 7, 1968, Pub. L. 90–391, § 6, 82 Stat. 299, related to grants for innovaction of vocational rehabilitation services, providing in: subsec. (a) for the basis of allotments; subsec. (b) for duration of payments; subsec. (c) for restriction on payments; and subsec. (d) for additional amounts.

Section 34, acts June 2, 1920, ch. 219, § 4, 41 Stat. 736; June 9, 1930, ch. 414, § 3, 46 Stat. 525; July 6, 1943, ch. 190, § 1, 57 Stat. 377; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 655; Aug. 3, 1956, ch. 903, 70 Stat. 956; Aug. 28, 1957, Pub. L. 85–198, § 1, 71 Stat. 473; Aug. 28, 1957, Pub. L. 85–213, 71 Stat. 488; Nov. 8, 1965, Pub. L. 89–333, §§ 4(a), 5(a), 12(a), (b)(1), (2), 79 Stat. 1289, 1290, 1293; Oct. 3, 1967, Pub. L. 90–99, § 3, 81 Stat. 251; July 7, 1968, Pub. L. 90–391, § 7(a), (b), (d), 82 Stat. 299, 300; Dec. 31, 1970, Pub. L. 91–610, § 2, 84 Stat. 1817, related to grants for special projects, providing in: subsec. (a) general provisions; subsec. (b) for payments; and subsec. (c) for National Advisory Council on Vocational Rehabilitation.

Section 35, acts June 2, 1920, ch. 219, § 5, 41 Stat. 736; June 30, 1932, ch. 324, § 3, 47 Stat. 450; July 6, 1943, ch. 190, § 1, 57 Stat. 377; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 656; Nov. 8, 1965, Pub. L. 89–333, §§ 8(a), 12(b)(1), 79 Stat. 1291, 1293; Oct. 3, 1967, Pub. L. 90–99, § 6, 81 Stat. 253; July 7, 1968, Pub. L. 90–391, § 8, 82 Stat. 300, related to State plans, providing in: subsec. (a) for requirements for approval; subsec. (b) for approval; subsec. (c) for withholding or limitation of payments; and subsec. (d) for judicial review.

Section 36, acts June 2, 1920, ch. 219, § 6, 41 Stat. 737; June 5, 1924, ch. 265, 43 Stat. 432; June 9, 1930, ch. 414, § 4, 46 Stat. 526; June 30, 1932, ch. 324, § 4, 47 Stat. 450; July 6, 1943, ch. 190, § 1, 57 Stat. 378; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 658, related to method of computing and making payments.

Section 37, Acts June 2, 1920, ch. 219, § 7, 41 Stat. 737; July 6, 1943, ch. 190, § 1, 57 Stat. 378; Aug. 3, 1954, ch. 655, § 2, 68 Stat. 658; Aug. 28, 1957, Pub.L. 85–198, § 2, 71 Stat. 474; Nov. 8, 1965, Pub.L. 89–333, §§ 5(b), 7, 12(b)(1), 79 Stat. 1290, 1291, 1293; July 7, 1968, Pub.L. 90–391, § 9, 82 Stat. 301, related to administration, providing in: subsec. (a) general provisions; subsec. (b) for rules and regualtions; subsec. (c) for research and dissemination of information; subsec. (d) for authorization of appropriations; and subsec. (e) for evaluation of vocational rehabilitation program.

Section 38, act June 2, 1920, ch. 219, § 8, as added July 6, 1943, ch. 190, § 1, 57 Stat. 379, and amended Aug. 3, 1954, ch. 655, § 2, 68 Stat. 659; Nov. 8, 1965, Pub.L. 89–333, § 12(b)(3), 79 Stat. 1293, related to promotion of employment opportunities.

Section 39, act June 2, 1920, ch. 219, § 9, as added July 6, 1943, ch. 190, § 1, 57 Stat. 379, and amended Aug. 3, 1954, ch. 655, § 2, 68 Stat. 659, related to annual reports to Congress.

Section 40, act June 2, 1920, ch. 219, § 10, as added July 6, 1943, ch. 190, § 1, 57 Stat. 379, and admended Aug. 3, 1954, ch. 655, § 2, 68 Stat. 659, related to appropriations for administration.

Section 41, act June 2, 1920, ch. 219, § 11, as added July 6, 1943, ch. 190, § 1, 57 Stat. 379, and amended Aug. 3, 1954, ch. 655, § 2, 68 Stat. 659; Aug. 1, 1956, ch. 852, § 16, 70 Stat. 910; June 25, 1959, Pub. L. 86–70, § 24, 73 Stat. 147; July 12, 1960, Pub.L. 86–624, § 20, 74 Stat. 416; Nov. 8, 1965, Pub.L. 89–333, §§ 6(a), 9, 10(a), 11, 12(b)(1), (c), (d), 13, 79 Stat. 1291–1294; Oct. 3, 1967, Pub.L. 90–99, § 7, 81 Stat. 253; July 7, 1968, Pub.L. 90–391, § 10, 82 Stat. 301, related to definitions.

Section 41a, act June 2, 1920, ch. 219, § 12, as added Nov. 8, 1965, Pub. L. 89–333, § 3, 79 Stat. 1284, and amended July 7, 1968, Pub.L. 90–391, § 11, 82 Stat. 303; Dec. 31, 1970, Pub.L. 91–610, § 3, 84 Stat. 1817, related to grants for construction and staffing of rehabilitation facilities, providing in: subsec. (a) for authorization to make grants; subsec. (b) for project requirements, assurances, plans and specifications, and labor standards; subsec. (c) for percentage shares; subsec. (d) for reservation of grant funds, payment, and additional payments; subsec. (e) for recovery of Federal share upon cessation of public or non-profit character of rehabilitation facilities; subsec. (f) for grants for staffing facilities with professional or technical personnel and limitation on Federal share; subsec. (g) for planning grants; subsec. (h) for adjustments for overpayments or underpayments; subsec. (i) for authorization of appropriations; and subsec. (j) for definitions of "construction", "cost" of construction, and what a project for construction of a rehabilitation facility which is primarily a workshop, may include.

Section 41b, act June 2, 1920, ch. 219 § 13, as added Nov. 8, 1965, Pub. L. 89–333, § 3, 79 Stat. 1286, and amended July 7, 1968, Pub. L. 90–391, § 12, 82 Stat. 303; Dec. 31, 1970, Pub.L. 91–610, § 4, 84 Stat. 1817, related to rehabilitation facility improvement, providing in: subsec. (a) for

grants for projects for training services, authorization, definition of training services, allowances, and payments; subsec. (b) for rehabilitation facility improvement grants; authorization, improvement of service capability, and payments; subsec. (c) for technical assistance to rehabilitation facilities, and compensation of experts and consultants; subsec. (d) for National Policy and Performance Council, its establishment, membership, function, and compensation of members; subsec. (e) for labor standards; and subsec. (f) for authorization of appropriations.

Section 41c, act June 2, 1920, ch. 219, § 14, as added Nov. 8, 1965, Pub. L. 89–333, § 3, 79 Stat. 1288, related to waiver in the case of locally financed activity of requirement that plan be statewide.

Such former provisions are now covered by various sections as follows:

Former sections	*Present sections*
31(a)	701(1), 720(a)
31(b) (1), (2)	720(b) (1), (2)
31(b) (3) (A)	761(a), 774(a)
31(b) (3) (B)	720(b) (2)
31(b) (3) (C), (D)	774(a) (1)
31(b) (4)	See 720(b), 761(a), 774(a)
32(a)	730(a)
32(b)	731(a)
32(c)	724
33(a) (1)	740(a) (1)
33(a) (2)	741(a)
33(b)	741(b)
33(c)	709
33(d)	740(b)
34(a)	762 (a), (b), 763, 774(b), 776(h)
34(a) (1)	762(a), (b)
34(a) (2) (A)	741(a), (b)
34(a) (2) (B)	774(d)
34(a) (2) (C)	763(b), 774(b)
34(a) (2) (D)	723(a) (7)
34(b)	741(c)
34(c)	Repealed
35(a)	721(a)
35(a), (1), (2)	721(a) (1), (2)
35(a) (3)	721(a) (3), (4)
35(a) (4)	721(a) (5) (A) (i)
35(a) (5), (6)	721(a) (5), (6)
35(a) (7)	723(a) (1), (2)
35(a), (8), (9)	721(a) (10), (11)
35(a) (10)	721(a) (11), (12)
35(a) (11)	721(a) (13) (A)
35(a) (12), (13)	721(a) (14), (15)
35(a) (14)	721(a) (17)
35(b)–(d)	721(b)–(d)
36	731(b)
37 (a), (b)	780 (a), (b)
37(c) (1)	780(c)
37(c) (2)	785(a) (5)
37(d)	See 780(d)
37(e)	783
38	See 791, 791(f) (1)
39	784
40	780(d)
41(a) (1)	706(14), 723(a) (1)
41(a) (1) (A)–(C)	723(a) (1)–(3)
41(a) (1) (D), (E)	723(a) (6), (7)
41(a) (2)	723(b)
41(a) (2) (A) (i)–(iv)	723(a) (4) (A)–(D)
41(a) (2) (B)	723(a) (5)
41(a) (2) (C)	723(a) (9)
41(a) (2) (D), (E)	723(b) (1), (2)
41(a) (2) (F)	723(a) (10)
41(a) (2) (G)	723(a)
41(a) (2) (H)	723(a) (3)
41(b)	706 (4) (G), (6)
41(c)	706(10)
41(d)	See 706(L)
41(e)	706(8)
41(f)	706(3)
41(g)	706(13)
41(h)	707(a)
41(i)	706(5)
41(j)	707(b)
41(k)	706(11)
41(*l*)	706(1)
41a(a)	771(b) (1)
41a(b)	771(b) (2), 776
41a(b) (1) (A)–(C)	776(b) (1) (A)–(C)
41a(b) (2)	776(b) (4)
41a(b) (3)	See 780(b)
41a(b) (4)	776(b) (5)
41a(c)	771(b) (3)
41a(d), (e)	776 (c), (d)
41a (f), (g)	771 (c), (d)
41a(h)	776(e)
41a(i)	771(a)
41a(j) (1), (2)	706(1)
41a(j) (3)	776(f)
41b(a) (1)–(3)	772(b) (1)–(3)
41b(a) (4)	776(e)
41b (1), (2)	772(c) (1), (2)
41b(b) (3)	776(e)
41b(c)	774(e)
41b(d) (1)–(4)	Repealed
41b(e)	776(b) (4)
41b(f)	772(a), 774
41c	721(a) (4)

EFFECTIVE DATE OF REPEAL

Sections repealed effective 90 days after Sept. 26, 1973, see section 790(a) of this title.

§§ 42–1 to 42b. Repealed. Pub. L. 93–112, title V, § 500(a), Sept. 26, 1973, 87 Stat. 390.

Section 42–1, act June 2, 1920, ch. 219, § 15, as added July 7, 1968, Pub. L. 90–391, § 13, 82 Stat. 304, and amended Dec. 31, 1970, Pub. L. 91–610, § 5, 84 Stat. 1817, related to vocational evaluation and work adjustment program, providing in: subsec. (a) for computation of allotments, authorization of appropriations, Federal payments, restriction on payments, evaluation and work adjustment services, and disadvantaged individuals; subsec. (b) for restriction on payments; subsec. (c) for State plans and requirements for approval; subsec. (d) for withholding of payments and judicial review; and subsec. (e) for payments to States adjustments, advances or reinbursement, installments, and conditions.

Section 42a, act June 2, 1920, ch. 219, § 16, formerly § 17, as added Oct. 3, 1967, Pub. L. 90–99, § 4, 81 Stat. 251, renumbered July 7, 1968, Pub. L. 90–391, § 13, 82 Stat. 304, related to National Center for Deaf-Blind Youths and Adults, providing in subsec. (a) for statement of purpose, agreement for establishment and operation of the National Center, and its designation; subsec. (b) for proposals and preference; subsec. (c) for terms and conditions of agreement; subsec. (d) for recovery of funds for non-user of facilities for contemplated purposes or termination of agreement, and cause for release from obligation; and subsec. (e) for definition of "construction" for determination pursuant to regulations of the Secretary of who are both deaf and blind. Subsections (c) (2)–(4) of section 42a were amended by Pub. L. 93–608, § 1(8), Jan. 2, 1975, 88 Stat. 1968, without reference to the repeal of this section by Pub. L. 93–112. The purported amendment is set out as a note under section 775 of this title which is the comparable section in the Vocational Rehabilitation Act of 1973.

Section 42b, act June 2, 1920, ch. 219, § 17, formerly § 18, as added Oct. 3, 1967, Pub. L. 90–99, § 5, 81 Stat. 252, renumbered July 7, 1968, Pub. L. 90–391, § 13, 82 Stat. 304, related to grants for services for migratory agricultural workers, authorization, payments, and other related provisions.

Such former provisions are now covered by various sections as follows:

Former sections	*Present sections*
42–1(a) (1)	See 730(a), 740(a)
42–1(a) (2)	720(b) (1)
42–1(a) (3)	Repealed
42–1(a) (4) (A)–(F)	706(4) (A)–(F)
42–1(a), last sentence	Repealed
42–1(b)	709
42–1(c)	See 721(a)
42–1(c) (1)	721(a) (1)

Former sections	*Present sections*
42–1(c)(2)	721(a)(3)
42–1(c)(3)	721(a)(5)(A)
42–1(c), (4), (5)	721(a) (6), (7)
42–1(c)(6)	Repealed
42–1(c)(7)	721(a)(10)
42–1(c)(8)	See 721 (a)(11)
42–1(d)	See 721 (c), (d)
42–1(e)	See 776(e)
42a (a), (b)	775 (b), (c)
42a(c)(1)–(3)	776(b) (2), (3), (5)
42a(c)(4)	Repealed
42a(d)	776(d)
42a(e)(1)	706(1)
42a(e)(2)	See 723(a)(6)
42b	774(c)

EFFECTIVE DATE OF REPEAL

Sections repealed effective 90 days after Sept. 26, 1973, see section 790(a) of this title.

Chapter 4B.—FEDERAL EMPLOYMENT SERVICE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 7 sections 2043, 2045.

§ 49. United States Employment Service; bureau established; transfer of records, employees, etc., of existing employment service.

ADMINISTRATION OF MANPOWER IN DISTRICT OF COLUMBIA

Pub. L. 93–198, title II, § 204(a), Dec. 24, 1973, 87 Stat. 783, provided that: "All functions of the Secretary of Labor (hereafter in this section referred to as the Secretary) under section 3 of the Act entitled 'An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes', approved June 6, 1933 (29 U.S.C. 49–49k), with respect to the maintenance of a public employment service for the District [of Columbia], are transferred [effective July 1, 1974] to the Commissioner [of the District of Columbia established under Reorg. Plan No. 3 of 1967]. After the effective date of this transfer [July 1, 1974], the Secretary shall maintain with the District the same relationship with respect to a public employment service in the District, including the financing of such service, as he has with the States (with respect to a public employment service in the States) generally."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49b, 49c–1, 49g, 49h, 49j, 816, 954, 981 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–701, 46–313 of the District of Columbia Code.

§ 49a. Officers and employees; veterans' preferences.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 954, 981 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–701, 46–313 of the District of Columbia Code.

§ 49b. Employment offices; development of national system; veterans' service; "State" defined.

(a) It shall be the province and duty of the bureau to promote and develop a national system of employment offices for men, women, and juniors who are legally qualified to engage in gainful occupations, including employment counseling and placement services for handicapped persons, to maintain a veterans' service to be devoted to securing employment for veterans, to maintain a farm placement service, and, in the manner provided in sections 49c, 49d, 49g, 49h, 49j, and 49k of this title and section 338 of Title 39, to assist in establishing and maintaining systems of public employment offices in the several States and the political subdivisions thereof in which there shall be located a veterans' employment service. The bureau shall also assist in coordinating the public employment offices throughout the country and in increasing their usefulness by developing and prescribing minimum standards of efficiency, assisting them in meeting problems peculiar to their localities, promoting uniformity in their administrative and statistical procedure, furnishing and publishing information as to opportunities for employment and other information of value in the operation of the system, and maintaining a system for clearing labor between the several States.

(b) Whenever in sections 49 to 49c, 49d, 49g, 49h, 49j, and 49k of this title and section 338 of Title 39 the word "State" or "States" is used, it shall be understood to include Puerto Rico, Guam, the District of Columbia, and the Virgin Islands. (As amended Dec. 24, 1973, Pub. L. 93–198, title II, § 204(c), 87 Stat. 783.)

REFERENCES IN TEXT

Section 338 of title 39, referred to in the text, was repealed by Pub. L. 86–682, § 12(c), Sept. 2, 1960, 74 Stat. 708, and is now covered by section 3202 of Title 39, Postal Service.

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–198 eliminated the function of maintaining a public employment service for the District of Columbia from the functions of the bureau.

Subsec. (b). Pub. L. 93–198 included District of Columbia in the definition of "State" or "States".

EFFECTIVE DATE OF 1973 AMENDMENT

Section 771(b) of Pub. L. 93–198 provided in part that title II of Pub. L. 93–198 [which amended this section and section 50 of this title, and enacted provisions set out as notes under section 49 of this title and section 8101 of Title 5, Government Organization and Employees], shall take effect on July 1, 1974.

ADMINISTRATION OF MANPOWER IN DISTRICT OF COLUMBIA

Functions of the Secretary of Labor with respect to the maintenance of a public employment service for the District of Columbia are transferred to the Commissioner of the District of Columbia, see section 204(a) of Pub. L. 93–198, set out as a note under section 49 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 49a, 49c, 49c–1, 49d, 49g, 49h, 49j, 816, 954, 981 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–701, 46–313 of the District of Columbia Code.

§ 49c. Acceptance by States; creation of State agencies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 954, 981 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–701, 46–313 of the District of Columbia Code.

§ 49d. Appropriations; certification for payment to States.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 954, 981 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–701, 46–313 of the District of Columbia Code.

§§ 49g, 49h.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 816, 954, 981 of this title.

SECTIONS REFERRED TO IN D.C. CODE

These sections are referred to in sections 36–701, 46–313 of the District of Columbia Code.

§ 49j. Federal Advisory Council; establishment and composition; State Advisory Councils; notice of strikes and lockouts to applicants.

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a Council established by the President or an officer of the Federal Government, such Council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Council established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 954, 981 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–701, 46–313 of the District of Columbia Code.

§ 49k. Rules and regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 954, 981 of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–701, 46–313 of the District of Columbia Code.

Chapter 4C.—APPRENTICE LABOR

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 38 section 1701.

§ 50. Promotion of labor standards of apprenticeship.

The Secretary of Labor is authorized and directed to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Office of Education under the Department of Health, Education, and Welfare in accordance with section 17 of Title 20. For the purposes of this chapter the term "State" shall include the District of Columbia. (As amended Dec. 24, 1973, Pub. L. 93–198, title II, § 204(h), 87 Stat. 784.)

AMENDMENTS

1973—Pub. L. 93–198 added provision that the term "State" includes the District of Columbia.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–198 effective July 1, 1974, see section 771(b) of Pub. L. 93–198, set out in part as a note under section 49b of this title.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–123, 36–132 of the District of Columbia Code.

§ 50a. Publication of information; national advisory committees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 50b of this title; title 38 sections 1772, 1787.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–123, 36–132 of the District of Columbia Code.

§ 50b. Appointment of employees.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in sections 36–123, 36–132 of the District of Columbia Code.

Chapter 5.—LABOR DISPUTES; MEDIATION AND INJUNCTIVE RELIEF

§ 52. Statutory restriction of injunctive relief.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 755.

§ 53. "Person" or "persons" defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 755.

Chapter 7.—LABOR-MANAGEMENT RELATIONS

SUBCHAPTER II.—NATIONAL LABOR RELATIONS

Sec.
169. Individuals with religious convictions [New].

SUBCHAPTER III.—CONCILIATION OF LABOR DISPUTES; NATIONAL EMERGENCIES

183. Conciliation of labor disputes in the health care industry [New].
(a) Establishment of Boards of Inquiry; membership.
(b) Compensation of members of Boards of Inquiry.
(c) Maintenance of status quo.
(d) Authorization of appropriations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1002 of this title.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 1–1412 of the District of Columbia Code.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 141. Short title; Congressional declaration of purpose and policy.

EXECUTIVE ORDER NO. 10918

Ex. Ord. No. 10918, Feb. 16, 1961, 26 F.R. 1427, set out as a note under this section, which established the President's Advisory Committee on Labor-Management Policy, was revoked by Ex. Ord. No. 11710, Apr. 4, 1973, 38 F.R. 9071, set out as a note under this section.

EXECUTIVE ORDER NO. 11710

Ex. Ord. No. 11710, Apr. 4, 1973, 38 F.R. 9071, as amended by Ex. Ord. No. 11729, July 12, 1973, 38 F.R. 18863, formerly set out as a note under this section, which established the National Commission for Industrial Peace, was revoked by Ex. Ord. No. 11823, Dec. 12, 1974, 39 F.R. 43529.

EX. ORD. NO. 11809. PRESIDENT'S LABOR MANAGEMENT COMMITTEE

Ex. Ord. No. 11809, Sept. 30, 1974, 39 F.R. 35565, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States of America it is ordered as follows:

SECTION 1. There is hereby established the President's Labor-Management Committee (hereinafter referred to as the Committee). The Committee shall consist of eight labor members and eight management members and a neutral coordinator, all to be designated by the President.

SEC. 2. The Committee shall study and shall advise and make recommendations to the President with respect to policies that may be followed by labor, management, or the public which will promote free and responsible collective bargaining, industrial peace, sound wage and price policies, higher standards of living, increased productivity, and related manpower policies, and such other matters which could contribute to the longer-run economic well-being of the Nation.

SEC. 3. The Committee shall encourage the establishment of labor-management committees (bipartite or tripartite) in particular sectors or industries as may be appropriate.

SEC. 4. All executive departments and agencies of the Federal Government are authorized and directed to cooperate with the Committee and to furnish such information and assistance, not inconsistent with law, as it may require in the performance of its duties.

SEC. 5. The Secretary of the Treasury shall perform any functions with respect to the Committee as may be required by the Federal Advisory Committee Act (5 U.S.C. App. I).

GERALD R. FORD.

SUBCHAPTER II.—NATIONAL LABOR RELATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 186 of this title; title 42 section 2000e.

§ 152. Definitions.

When used in this subchapter—

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

* * * * * *

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

(As amended July 26, 1974, Pub. L. 93–360, § 1(a), (b), 88 Stat. 395.)

AMENDMENTS

1974—Subsec. (2). Pub. L. 93–360, § 1(a), struck out provisions which had excepted from the definition of "employer" corporations and associations operating hospitals if no part of the net earnings inured to the benefit of any private shareholder or individual.

Subsec. (14). Pub. L. 93–360, § 1(b), added subsec. (14).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–360 effective on the thirtieth day after July 26, 1974, see section 4 of Pub. L. 93–360, set out as a note under section 169 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 784.

§ 153. National Labor Relations Board.

* * * * * *

(c) Annual reports to Congress and to the President.

The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, and an account of all moneys it has disbursed.

* * * * * *

(As amended Jan. 2, 1975, Pub. L. 93–608, § 3(3). 88 Stat. 1972.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 93–608 struck out requirement that report contain the names, salaries, and duties of all employees and officers employed or supervised by the Board.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 152 of this title.

§ 158. Unfair labor practices.

* * * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party, to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

* * * * * *

The duties imposed upon employers, employees, and labor organizations by paragraphs (2)–(4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158 to 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this subsection shall be modified as follows:

(A) The notice of paragraph (1) of this subsection shall be ninety days; the notice of paragraph (3) of this subsection shall be sixty days; and the contract period of paragraph (4) of this subsection shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in paragraph (3) of this subsection.

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: *Provided,* That nothing in this subsection shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: *Provided further,* That for the purposes of this subsection and subsection (b) (4) (B) of this section the terms "any employer", "any person engaged in commerce or an industry affecting commerce", and "any person" when used in relation to the terms "any other producer, processor, or manufacturer", "any other employer", or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Providing further,* That nothing in this subchapter shall prohibit the enforcement of any agreement which is within the foregoing exception.

* * * * *

(g) A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of subsection (d) of this section. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties. (As amended July 26, 1974, Pub. L. 93–360, § 1(c)–(e), 88 Stat. 395, 396.)

CODIFICATION

Subsection (e) is set out in this Supplement to correct typographical error.

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–360, § 1(c), (d), substituted "any notice" for "the sixty-day" and inserted ", or who engages in any strike within the appropriate period specified in subsection (g) of this section," in the loss-of-employee-status provision and added the enumeration of modifications to this subsection which are to be applied whenever the collective bargaining involves employees of a health care institution.

Subsec. (g). Pub. L. 93–360, § 1(e), added subsec. (g).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–360 effective on the thirtieth day after July 26, 1974, see section 4 of Pub. L. 93–360, set out as a note under section 169 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 158a, 159, 160, 183, 187, 433 of this title; title 50 section 792.

§ 160. Prevention of unfair labor practices.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 153, 158, 159, 161, 168 of this title; title 50 section 792a.

§ 161. Investigatory powers of Board.

This section is referred to in title 42 section 2000e–9.

§ 169. Individuals with religious convictions.

Any employee of a health care institution who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required, in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious charitable fund exempt from taxation under section 501(c)(3) of Title 26, chosen by such employee from a list of at least three such funds, designated in a contract between such institution and a labor organization, or if the contract fails to designate such funds, then to any such fund chosen by the employee. (July 5, 1935, ch. 372, § 19, as added July 26, 1974, Pub. L. 93–360, § 3, 88 Stat. 397.)

EFFECTIVE DATE

Section 4 of Pub. L. 93–360 provided that: "The amendments made by this Act [enacting this section and section 183 of this title and amending sections 152 and 158 of this title] shall become effective on the thirtieth day after its date of enactment [July 26, 1974]."

SUBCHAPTER III.—CONCILIATION OF LABOR DISPUTES; NATIONAL EMERGENCIES

§ 171. Declaration of purpose and policy.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of 1970 Reorg. Plan No. 2, redesignated the Bureau of the Budget as the Office of Management and Budget. See Office of Management and Budget note set out under this section in the main volume.

EX. ORD. NO. 11849. COLLECTIVE BARGAINING COMMITTEE IN CONSTRUCTION

Ex. Ord. No. 11849, Apr. 1, 1975, 40 F.R. 14887, provided:

The President's Labor-Management Committee established by Executive Order No. 11809 [set out as a note under section 141 of this title] was authorized to "encourage the establishment of labor-management committees (bipartite or tripartite) in particular sectors or industries as may be appropriate." That Committee expressed the view that a committee should appropriately be established in the construction industry.

An interim labor-management committee on collective bargaining problems in construction, representative of labor and management organizations involved in collective bargaining in the industry, has met regularly since November 1974 to explore the feasibility and details of a continuing committee.

The recommendations of the interim labor-management committee have been ratified by the standard national labor and management organizations engaged in collective bargaining in the industry, and their representatives have been authorized to participate and serve on such a committee.

This Order is required to establish an arrangement and machinery for an operating structure with a minimum of government interference in the futherance of more effective collective bargaining in the industry.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States of America, it is ordered as follows:

Section 1. There is hereby established the Collective Bargaining Committee in Construction (hereinafter referred to as the Committee). The Committee shall consist of ten labor members and ten management members appointed by the President. The Secretary of Labor or his designee shall serve as Chairman. The Director of the Federal Mediation and Conciliation Service shall participate as a member of the Committee. Additional alternate members may be appointed by the Secretary of Labor.

Sec. 2. (a) The Committee shall facilitate the collective bargaining process at local and area levels, assist in providing a data bank of wage and benefit information, encourage peaceful negotiation of responsible local and area agreements, facilitate local coordinated bargaining and larger area bargaining wherever appropriate, and seek to resolve particular disputes that cannot otherwise be reasonably resolved.

(b) In the furtherance of these objectives the Committee is authorized to hold conferences; and if it deems appropriate, in particular collective bargaining disputes or in groups of related disputes, the Committee may make recommendations to the appropriate standard organizations which are party to collective bargaining in the construction industry concerning the provisions of agreements or the structure of collective bargaining.

(c) The Committee shall promote more effective machinery for the resolution of disputes over the terms of collective bargaining agreements which recognizes the interests of each branch of the industry and preserves existing procedures that have been effective.

Sec. 3. In addition to the foregoing tasks, the Committee shall also:

(a) Review and analyze construction manpower under collective bargaining agreements, including regional requirements and availabilities of respective skills for projected needs, and the effectiveness of training programs, and, if appropriate, maintain a continuing central data file of manpower requirements and availabilities by major areas of the country;

(b) Consider measures to reduce the instability of demand for construction labor and to provide more weeks of work per year;

(c) Take measures to increase productivity in the industry under collective bargaining agreements;

(d) Improve further the current wage and benefit data base for construction to facilitate collective bargaining at local and regional levels and the role of the national organizations in dispute settlements;

(e) Consider the problems for collective bargaining arising from the activities of separate Federal government agencies as they affect the construction industry;

(f) Consider from time to time such problems in the construction industry under collective bargaining as it may deem appropriate; and

(g) Encourage the establishment of comparable joint regional or local committees on an area basis to the extent it deems appropriate.

Sec. 4. In carrying out its functions, the Committee shall give consideration to long term developments in the construction industry under collective bargaining agreements and shall seek to develop appropriate policies in the national interest.

Sec. 5. All executive departments and agencies of the Federal government are authorized and directed to cooperate with the Committee and to furnish such information, personnel and assistance, not inconsistent with law, as it may require in the performance of its duties.

Sec. 6. The Committee shall make periodic reports to the President. Standard national labor and management organizations are encouraged to review the operation of the Committee and report to the President annually on the extent to which the purposes of this Order are being achieved.

GERALD R. FORD

§ 176. National emergencies; appointment of board of inquiry by President; report; contents; filing with Service.

EX. ORD. NO. 11621. CREATION OF BOARD OF INQUIRY

Ex. Ord. No. 11621, Oct. 4, 1971, 36 F.R. 19435, as amended by Ex. Ord. No. 11622, Oct. 5, 1971, 36 F.R. 19491, provided:

WHEREAS, there exist certain labor disputes between employers (or associations by which such employers are represented in collective bargaining conferences) who are (1) steamship companies operating ships or employed as agents for ships engaged in service from or to Atlantic, Pacific, Great Lakes, and Gulf Coast ports of the United States, or from or to other ports of the United States or its territories or possessions, (2) contracting stevedores, (3) contracting marine carpenters, (4) lighterage operators, or (5) other employers engaged in related or associated pier activities, and certain of their employees represented by the International Longshoremen's Association, AFL–CIO; the International Association of Machinists and Aerospace Workers, AFL–CIO and District Lodge 94 and Local Lodge 1484 thereof; and the International Longshoremen's and Warehousemen's Union; and

WHEREAS, such disputes have resulted in strikes on Pacific, Atlantic, Great Lakes, and Gulf Coast ports of the United States which if permitted to continue will, in my opinion, affect a substantial part of the maritime industry, and industry engaged in trade, commerce, transportation, transmission, or communication among the several States and with foreign nations, and will imperil the national health and safety.

NOW, THEREFORE, by virtue of the authority vested in me by Section 206 of the Labor-Management Relations Act, 1947 (61 Stat. 155; 29 U.S.C. 176), I hereby create a Board of Inquiry, consisting of:

J. Keith Mann, Chairman
Paul Hanlon
Jacob Seidenberg
Rolf Valtin

as Members, whom I hereby appoint to inquire into the issues involved in such disputes.

The Board shall have powers and duties as set forth in Title II of such Act [section 171 et seq. of this title]. The Board shall report to the President in accordance with the provisions of Section 206 of such Act on or before October 6, 1971.

Upon the submission of its report, the Board shall continue in existence to perform such other functions as may be required under such Act.

RICHARD NIXON.

§ 183. Conciliation of labor disputes in the health care industry.

(a) Establishment of Boards of Inquiry; membership.

If, in the opinion of the Director of the Federal Mediation and Conciliation Service, a threatened or

actual strike or lockout affecting a health care institution will, if permitted to occur or to continue, substantially interrupt the delivery of health care in the locality concerned, the Director may further assist in the resolution of the impasse by establishing within 30 days after the notice to the Federal Mediation and Conciliation Service under clause (A) of the last sentence of section 158(d) of this title (which is required by clause (3) of such section 158(d) of this title), or within 10 days after the notice under clause (B), an impartial Board of Inquiry to investigate the issues involved in the dispute and to make a written report thereon to the parties within fifteen (15) days after the establishment of such a Board. The written report shall contain the findings of fact together with the Board's recommendations for settling the dispute, with the objective of achieving a prompt, peaceful and just settlement of the dispute. Each such Board shall be composed of such number of individuals as the Director may deem desirable. No member appointed under this section shall have any interest or involvement in the health care institutions or the employee organizations involved in the dispute.

(b) Compensation of members of Boards of Inquiry.

(1) Members of any board established under this section who are otherwise employed by the Federal Government shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out its duties under this section.

(2) Members of any board established under this section who are not subject to paragraph (1) shall receive compensation at a rate prescribed by the Director but not to exceed the daily rate prescribed for GS–18 of the General Schedule under section 5332 of Title 5, including travel for each day they are engaged in the performance of their duties under this section and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(c) Maintenance of status quo.

After the establishment of a board under subsection (a) of this section and for 15 days after any such board has issued its report, no change in the status quo in effect prior to the expiration of the contract in the case of negotiations for a contract renewal, or in effect prior to the time of the impasse in the case of an initial beginning negotiation, except by agreement, shall be made by the parties to the controversy.

(d) Authorization of appropriations.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. (June 23, 1947, ch. 120, title II, § 213, as added July 26, 1974, Pub. L. 93–360, § 2, 88 Stat. 396.)

EFFECTIVE DATE

Section effective on the thirtieth day after July 26, 1974, see section 4 of Pub. L. 93–360, set out as a note under section 169 of this title.

SUBCHAPTER IV.—LIABILITIES OF AND RESTRICTIONS ON LABOR AND MANAGEMENT

§ 186. Restrictions on payments and loans to employee representatives, labor organizations, officers and employees of labor organizations, and to employees or groups or committees of employees; exceptions; penalties; jurisdiction; effective date; exception of certain trust funds.

* * * * *

(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided,* That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee group deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure

to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: *Provided,* That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: *Provided,* That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: *Provided further,* That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; or (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: *Provided,* That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: *Provided further,* That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under subchapter II of this chapter or this chapter; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

* * * * *

(As amended Aug. 15, 1973, Pub. L. 93–95, 87 Stat. 314.)

REFERENCES IN TEXT

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (c) of this section, is classified to chapter 11 (section 401 et seq.) of this title.

AMENDMENTS

1973—Subsec. (c). Pub. L. 93–95 added cl. (8).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 432, 433, 523, 1002, 1111 of this title; title 18 section 2516; title 33 section 917.

Chapter 8.—FAIR LABOR STANDARDS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 255 to 262, 848, 881 of this title; title 42 section 3056.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in sections 1–1412, 36–404 of the District of Columbia Code.

§ 202. Congressional finding and declaration of policy.

(a) The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce. That Congress further finds that the employment of persons in domestic service in households affects commerce.

* * * * *

(As amended Apr. 8, 1974, Pub. L. 93–259, § 7(a), 88 Stat. 62.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–259 added finding of Congress that the employment of persons in domestic service in households affects commerce.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 29(a) of Pub. L. 93–259 provided that: "Except as otherwise specifically provided [see notes under sections 206, 207, and 213 of this title], the amendments made by this Act [see Short Title note under this section] shall take effect on May 1, 1974."

SHORT TITLE

Section 1(a) of Pub. L. 93–259 provided that: "This Act [which enacted section 633a of this title and amended sections 202–204, 206–208, 210, 212–214, 216, 255, 260, 630, and 634 of this title] may be cited as the 'Fair Labor Standards Amendments of 1974'."

RULES, REGULATIONS, AND ORDERS WITH REGARD TO FAIR LABOR STANDARDS AMENDMENTS OF 1974

Section 29(b) of Pub. L. 93–259 provided that: "Notwithstanding subsection (a) [set out as a note under this section], on and after the date of the enactment of this Act [Apr. 8, 1974] the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act [see Short Title of 1974 amendment note under this section]."

§ 203. Definitions.

As used in this chapter—

* * * * *

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency,

but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.

(e) (1) Except as provided in paragraphs (2) and (3), the term "employee" means any individual employed by an employer.

(2) In the case of an individual employed by a public agency, such term means—

(A) any individual employed by the Government of the United States—

(i) as a civilian in the military departments (as defined in section 102 of Title 5),

(ii) in any executive agency (as defined in section 105 of such title),

(iii) in any unit of the legislative or judicial branch of the Government which has positions in the competitive service,

(iv) in a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(v) in the Library of Congress;

(B) any individual employed by the United States Postal Service or the Postal Rate Commission; and

(C) any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(i) who is not subject to the civil service laws of the State, political subdivision, or agency which employs him; and

(ii) who—

(I) holds a public elective office of that State, political subdivision, or agency,

(II) is selected by the holder of such an office to be a member of his personal staff,

(III) is appointed by such an officeholder to serve on a policymaking level, or

(IV) who is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of his office.

(3) For purposes of subsection (u) of this section, such term does not include any individual employed by an employer engaged in agriculture if such individual is the parent, spouse, child, or other member of the employer's immediate family.

* * * * *

(h) "Industry" means a trade, business, industry, or other activity, or branch or group thereof, in which individuals are gainfully employed.

* * * * *

(m) "Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees: *Provided*, That the cost of board, lodging, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: *Provided further*, That the Secretary is authorized to determine the fair value of such board, lodging, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage of a tipped employee, the amount paid such employee by his employer shall be deemed to be increased on account of tips by an amount determined by the employer, but not by an amount in excess of 50 per centum of the applicable minimum wage rate, except that the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee. The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

* * * * *

(r) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, and agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact it occupies premises leased to it by a person who also leases premises to other retail or service establishments. For purposes of this subsection, the activities performed by any person or persons—

(1) in connection with the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit), or

(2) in connection with the operation of a street, suburban or interurban electric railway, or local trolley or motorbus carrier, if the rates and serv-

ices of such railway or carrier are subject to regulation by a State or local agency (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), or

(3) in connection with the activities of a public agency,

shall be deemed to be activities performed for a business purpose.

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and which—

(1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated);

(2) is engaged in laundering, cleaning, or repairing clothing or fabrics;

(3) is engaged in the business of construction or reconstruction, or both;

(4) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such hospital, institution, or school is public or private or operated for profit or not for profit); or

(5) is an activity of a public agency.

Any establishment which has as its only regular employees the owner thereof or the parent, spouse, child, or other member of the immediate family of such owner shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce or a part of such an enterprise, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection. The employees of an enterprise which is a public agency shall for purposes of this subsection be deemed to be employees engaged in commerce, or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

* * * * *

(x) "Public agency" means the Government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State; or any interstate governmental agency. (As amended June 23, 1972, Pub. L. 92–318, title IX, § 906(b)(2), (3), 86 Stat. 375; Apr. 8, 1974, Pub. L. 93–259, §§ 6(a), 13(e), 88 Stat. 58, 64.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–259, § 6(a)(1), redefined "employer" to include a public agency and deleted text which excluded from such term the United States or any State or political subdivision of a State (except with respect to employees of a State, or a political subdivision thereof, employed (1) in a hospital, institution, or school referred to in the last sentence of subsection (r) of this section, or (2) in the operation of a railway or carrier referred to in such sentence).

Subsec. (e). Pub. L. 93–259, § 6(a)(2), in revising definition of "employee", incorporated existing introductory text in provisions designated as par. (1), inserting therein the exception provision; added par. (2); incorporated existing cl. (1) in provisions designated as par. (3); and deleted former cl. (2) excepting from "employee", "any individual who is employed by an employer engaged in agriculture if such individual (A) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (B) commutes daily from his permanent residence to the farm on which he is so employed, and (C) has been engaged in agriculture less than thirteen weeks during the preceding calendar year".

Subsec. (h). Pub. L. 93–259, § 6(a)(3), substituted "other activity, or branch or group thereof" for "branch thereof, or group of industries".

Subsec. (m). Pub. L. 93–259, § 13(e), substituted in provision respecting wage of tipped employee "the amount of the increase on account of tips determined by the employer may not exceed the value of tips actually received by the employee" for "in the case of an employee who (either himself or acting through his representative) shows to the satisfaction of the Secretary that the actual amount of tips received by him was less than the amount determined by the employer as the amount by which the wage paid him was deemed to be increased under this sentence, the amount paid such employee by his employer shall be deemed to have been increased by such lesser amount" and added sentence "The previous sentence shall not apply with respect to any tipped employee unless (1) such employee has been informed by the employer of the provisions of this subsection, and (2) all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips."

Subsec. (r)(3). Pub. L. 93–259, § 6(a)(4), added par. "(3) in connection with the activities of a public agency,".

Subsec. (s). Pub. L. 93–259, § 6(a)(5), in first sentence, substituted preceding par. (1) "or employees handling, selling, or otherwise working on goods or materials" for "including employees handling, selling, or otherwise working on goods", and added par. "(5) is an activity of a public agency."; and added third sentence deeming employees of an enterprise which is a public agency to be employees engaged in commerce, or in production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce.

Subsec. (x). Pub. L. 93–259, § 6(a)(6), added subsec. (x).

1972—Subsec. (r)(1). Pub. L. 92–318, § 906(b)(2), inserted reference to a preschool.

Subsec. (s)(4). Pub. L. 92–318, § 906(b)(3), inserted reference to a preschool.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 207, 213 of this title; title 7 sections 1467, 2042; title 49 section 303.

§ 204. Administration.

* * * * *

(d)(1) The Secretary shall submit annually in January a report to the Congress covering his activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as he may find advisable. Such report shall contain an evaluation and appraisal by the Secretary of the minimum wages and overtime coverage established by this chapter, together with his recommendations to the Congress. In making such evaluation and appraisal, the Secretary shall take into consideration any changes which may have occurred in the cost of living and in productivity and the level of wages in manufacturing, the ability of employers to absorb wage increases, and such other factors as he may deem pertinent. Such report shall also include a summary of the special certificates issued under section 214(b) of this title.

(2) The Secretary shall conduct studies on the justification or lack thereof for each of the special exemptions set forth in section 213 of this title, and the extent to which such exemptions apply to employees of establishments described in subsection (g) of such section and the economic effects of the application of such exemptions to such employees. The Secretary shall submit a report of his findings and recommendations to the Congress with respect to the studies conducted under this paragraph not later than January 1, 1976.

(3) The Secretary shall conduct a continuing study on means to prevent curtailment of employment opportunities for manpower groups which have had historically high incidences of unemployment (such as disadvantaged minorities, youth, elderly, and such other groups as the Secretary may designate). The first report of the results of such study shall be transmitted to the Congress not later than one year after the effective date of the Fair Labor Standards Amendments of 1974. Subsequent reports on such study shall be transmitted to the Congress at two-year intervals after such effective date. Each such report shall include suggestions respecting the Secretary's authority under section 214 of this title.

* * * * *

(f) The Secretary is authorized to enter into an agreement with the Librarian of Congress with respect to individuals employed in the Library of Congress to provide for the carrying out of the Secretary's functions under this chapter with respect to such individuals. Notwithstanding any other provision of this chapter, or any other law, the Civil Service Commission is authorized to administer the provisions of this chapter with respect to any individual employed by the United States (other than an individual employed in the Library of Congress, United States Postal Service, Postal Rate Commission, or the Tennessee Valley Authority). Nothing in this subsection shall be construed to affect the right of an employee to bring an action for unpaid minimum wages, or unpaid overtime compensation, and liquidated damages under section 216(b) of this title. (As amended Apr. 8, 1974, Pub. L. 93–259, §§ 6(b), 24(c), 27, 88 Stat. 60, 72, 73.)

REFERENCES IN TEXT

Effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (d)(3), means May 1, 1974, except as otherwise specifically provided, under provisions of section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

AMENDMENTS

1974—Subsec. (d)(1). Pub. L. 93–259, §§ 24(c), 27(1), (2), added provision at end of subsec. (d) requiring the report to Congress to include a summary of the special certificates issued under section 214(b) of this title, designated subsec. (d) provisions as subsec. (d)(1), and required the report to contain an evaluation and appraisal of overtime coverage established by this chapter, respectively.

Subsec. (d)(2), (3). Pub. L. 93–259, § 27(3), added pars. (2) and (3).

Subsec. (f). Pub. L. 93–259, § 6(b), added subsec. (f).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

§ 205. Special industry committees for Puerto Rico and the Virgin Islands.

* * * * *

(e) The provisions of this section 206(c) of this title, and section 208 of this title shall not apply with respect to the minimum wage rate of any employee employed in Puerto Rico or the Virgin Islands (1) by the United States or by the government of the Virgin Islands, (2) by an establishment which is a hotel, motel, or restaurant, or (3) by any other retail or service establishment which employs such employee primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs. The minimum wage rate of such an employee shall be determined under this chapter in the same manner as the minimum wage rate for employees employed in a State of the United States is determined under this chapter. As used in the preceding sentence, the term "State" does not include a territory or possession of the United States. (As amended Apr. 8, 1974, Pub. L. 93–259, § 5(a), 88 Stat. 56.)

AMENDMENTS

1974—Subsec. (e). Pub. L. 93–259 added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Subsec. (e) of this section effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 206, 208, 213, 214 of this title.

§ 206. Minimum wage.

(a) Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) not less than $2 an hour during the period ending December 31, 1974, not less than $2.10 an hour during the year beginning January 1, 1975, and not less than $2.30 an hour after Decem-

ber 31, 1975, except as otherwise provided in this section;

* * * * *

(5) if such employee is employed in agriculture, not less than—

(A) $1.60 an hour during the period ending December 31, 1974,

(B) $1.80 an hour during the year beginning January 1, 1975,

(C) $2 an hour during the year beginning January 1, 1976,

(D) $2.20 an hour during the year beginning January 1, 1977, and

(E) $2.30 an hour after December 31, 1977.

(b) Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) of this section applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972, or the Fair Labor Standards Amendments of 1974, wages at the following rates:

(1) not less than $1.90 an hour during the period ending December 31, 1974,

(2) not less than $2 an hour during the year beginning January 1, 1975,

(3) not less than $2.20 an hour during the year beginning January 1, 1976, and

(4) not less than $2.30 an hour after December 31, 1976.

(c)(1) The rate or rates provided by subsections (a) and (b) of this section shall be superseded in the case of any employee in Puerto Rico or the Virgin Islands only for so long as and insofar as such employee is covered by a wage order heretofore or hereafter issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of this title.

(2) Except as provided in paragraphs (4) and (5), in the case of any employee who is covered by such a wage order on April 8, 1974 and to whom the rate or rates prescribed by subsection (a) or (b) of this section would otherwise apply, the wage rate applicable to such employee shall be increased as follows:

(A) Effective on the effective date of the Fair Labor Standards Amendments of 1974, the wage order rate applicable to such employee on the day before such date shall—

(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

(ii) if such rate is $1.40 or more an hour, be be increased by $0.15 an hour.

(B) Effective on the first day of the second and each subsequent year after such date, the highest wage order rate applicable to such employees on the date before such first day shall—

(i) if such rate is under $1.40 an hour, be increased by $0.12 an hour, and

(ii) if such rate is $1.40 or more an hour, be increased by $0.15 an hour.

In the case of any employee employed in agriculture who is covered by a wage order issued by the Secretary pursuant to the recommendations of a special industry committee appointed pursuant to section 205 of this title, to whom the rate or rates prescribed by subsection (a)(5) of this section would otherwise apply, and whose hourly wage is increased above the wage rate prescribed by such wage order by a subsidy (or income supplement) paid, in whole or in part, by the government of Puerto Rico, the increases prescribed by this paragraph shall be applied to the sum of the wage rate in effect under such wage order and the amount by which the employee's hourly wage rate is increased by the subsidy (or income supplement) above the wage rate in effect under such wage order.

(3) In the case of any employee employed in Puerto Rico or the Virgin Islands to whom this section is made applicable by the amendments made to this chapter by the Fair Labor Standards Amendments of 1974, the Secretary shall, as soon as practicable after April 8, 1974, appoint a special industry committee in accordance with section 205 of this title to recommend the highest minimum wage rate or rates, which shall be not less than 60 per centum of the otherwise applicable minimum wage rate in effect under subsection (b) of this section or $1.00 an hour, whichever is greater, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (b) of this section. The rate recommended by the special industry committee shall (A) be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation, but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1974, and (B) except in the case of employees of the government of Puerto Rico or any political subdivision thereof, be increased in accordance with paragraph (2)(B).

(4)(A) Notwithstanding paragraph (2)(A) or (3), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(A) or (3) of this subsection, shall, on the effective date of the wage increase under paragraph (2)(A) or of the wage rate recommended under pargraph (3), as the case may be, be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) of this section or $1.00, whichever is higher.

(B) Notwithstanding paragraph (2)(B), the wage rate of any employee in Puerto Rico or the Virgin Islands which is subject to paragraph (2)(B), shall, on and after the effective date of the first wage increase under paragraph (2)(B), be not less than 60 per centum of the otherwise applicable rate under subsection (a) or (b) of this section or $1.00, whichever is higher.

(5) If the wage rate of an employee is to be increased under this subsection to a wage rate which equals or is greater than the wage rate under subsection (a) or (b) of this section which, but for paragraph (1) of this subsection, would be applicable to such employee, this subsection shall be inapplicable to such employee and the applicable rate under such subsection shall apply to such employee.

(6) Each minimum wage rate prescribed by or under paragraph (2) or (3) shall be in effect unless such minimum wage rate has been superseded by a wage order (issued by the Secretary pursuant to the recommendation of a special industry committee

convened under section 208 of this title) fixing a higher minimum wage rate.

* * * * *

(f) Any employee—

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) of this section unless such employee's compensation for such service would not be because of section 209(g) of the Social Security Act constitute wages for the purposes of title II of such Act, or

(2) who in any workweek—

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b) of this section.

(As amended Apr. 8, 1974, Pub. L. 93–259, §§ 2–4, 5(b), 7(b)(1), 88 Stat. 55, 56, 62.)

REFERENCES IN TEXT

Title IX of the Education Amendments of 1972, referred to in subsec. (b), is classified to chapter 38 (section 1681 et seq.) of Title 20, Education.

For classification of Fair Labor Standards Amendments of 1974, referred to in subsecs. (b), (c)(3), see note set out under section 202 of this title.

Effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (c)(2), (3), means May 1, 1974, except as otherwise specifically provided, under provisions of section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Section 209(g) of the Social Security Act and title II of such Act, referred to in subsec. (f)(1), are classified to section 409(g) and section 401 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1974—Subsec. (a)(1). Pub. L. 93–259, § 2, substituted "not less than $2 an hour during the period ending December 31, 1974, not less than $2.10 an hour during the year beginning January 1, 1975, and not less than $2.30 an hour after December 31, 1975" for "not less than $1.40 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966 and not less than $1.60 an hour thereafter".

Subsec. (a)(5). Pub. L. 93–259, § 4, substituted provisions for a minimum wage rate not less than: $1.60 an hour during period ending Dec. 31, 1974; $1.80, $2, and $2.20 an hour during years beginning Jan. 1, 1975, 1976, and 1977, respectively; and $2.30 an hour after Dec. 31, 1977 for former provisions for a minimum wage rate not less than $1 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966, not less than $1.15 an hour during the second year from such date, and not less than $1.30 an hour thereafter.

Subsec. (b). Pub. L. 93–259, § 3, inserted references to "title II of the Education Amendments of 1972" and "Fair Labor Standards Amendments of 1974" and substituted provisions for a minimum wage rate not less than $1.90 an hour during period ending Dec. 31, 1974; $2 and $2.20 an hour during years beginning Jan. 1, 1975, and 1976, respectively; and $2.30 an hour after Dec. 31, 1976 for former provisions for a minimum wage rate not less than: $1 an hour during first year from effective date of Fair Labor Standards Amendments of 1966; $1.15, $1.30, and $1.45 an hour during second, third, and fourth years from such date; and $1.60 an hour thereafter.

Subsec. (c)(2)–(6). Pub. L. 93–259, § 5(b), added pars. (2)–(6) and struck out former pars. (2)–(4) which had provided:

"(2) In the case of any such employee who is covered by such a wage order and to whom the rate or rates prescribed by subsection (a) of this section would otherwise apply, the following rates shall apply:

"(A) The rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, increased by 12 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C). Such rate or rates shall become effective sixty days after the effective date of the Fair Labor Standards Amendments of 1966 or one year from the effective date of the most recent wage order applicable to such employee therefore issued by the Secretary pursuant to the recommendations of a special industry committee appointed under section 205 of this title, whichever is later.

"(B) Beginning one year after the applicable effective date under paragraph (A), not less than the rate or rates prescribed by paragraph (A), increased by an amount equal to 16 per centum of the rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C).

"(C) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, may apply to the Secretary in writing for the appointment of a review committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by paragraph (A) or (B). Any such application with respect to any rate or rates provided for under paragraph (A) shall be filed within sixty days following the enactment of the Fair Labor Standards Amendments of 1966 and any such application with respect to any rate or rates provided for under paragraph (B) shall be filed not more than one hundred and twenty days and not less han sixty days prior to the effective date of the applicable rate or rates under paragraph (B). The Secretary shall promptly consider such application and may appoint a review committee if he has reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with any applicable rate or rates prescribed by paragraph (A) or (B) will substantially curtail employment in such industry. The Secretary's decision upon any such application shall be final. Any wage order issued pursuant to the recommendations of a review committee appointed under this paragraph shall take effect on the applicable effective date provided in paragraph (A) or (B).

"(D) In the event a wage order has not been issued pursuant to the recommendation of a review committee prior to the applicable effective date under paragraph (A) or (B), the applicable percentage increase provided by any such paragraph shall take effect on the effective date prescribed therein, except with respect to the employees of an employer who filed an application under paragraph (C) and who files with the Secretary an undertaking with a surety or sureties satisfactory to the Secretary for payment to his employees of an amount sufficient to compensate such employees for the difference between the wages they actually receive and the wages to which they are entitled under this subsection. The Secretary shall be empowered to enforce such undertaking and any sums recovered by him shall be held on a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sum not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.

"(3) In the case of any such employee to whom subsection (a)(5) or subsection (b) of this section would otherwise apply, the Secretary shall within sixty days after the effective date of the Fair Labor Standards Amendments of 1966 appoint a special industry committee in accordance with section 205 of this title to recommend the highest minimum wage rate or rates in accordance with the standards prescribed by section 208 of this title, but not in excess of the applicable rate provided by subsection (a)(5) or subsection (b) of this section, to be applicable to such employee in lieu of the rate or rates prescribed by subsection (a)(5) or subsection (b) of this section, as the case may be. The rate or rates recommended by the

special industry committee shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1966.

"(4) The provisions of sections 205 and 208 of this title, relating to special industry committees, shall be applicable to review committees appointed under this subsection. The appointment of a review committee shall be in addition to and not in lieu of any special industry committee required to be appointed pursuant to the provisions of subsection (a) of section 208 of this title, except that no special industry committee shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary by a review committee to be paid in lieu of the rate or rates provided for under paragraph (A) or (B). The minimum wage rate or rates prescribed by this subsection shall be in effect only for so long as and insofar as such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of the applicable rate prescribed in subsection (a) or subsection (b) of this section) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee."

Subsec. (f), Pub. L. 93–259, § 7(b)(1), added subsec. (f).

EFFECTIVE DATE OF 1974 AMENDMENT

Subsec. (f) and amendment of subsecs. (a)(1), (5), and (b) of this section by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Section 5(b) of Pub. L. 93–259 provided that subsecs. (c)(2)–(6) and deletion of former subsecs. (c)(2)–(4) of this section shall be effective Apr. 8, 1974.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 203, 205, 207, 208, 213, 214, 215, 216, 821, 848 of this title; title 5 sections 5341, 5343, 5349; title 15 section 1673; title 18 section 3575; title 21 section 849; title 41 section 351; title 42 sections 300e–9, 431, 2000e–2, 2930b, 2951, 3056.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 16–572 of the District of Columbia Code.

§ 207. Maximum hours.

* * * * *

(b) No employer shall be deemed to have violated subsection (a) of this section by employing any employee for a workweek in excess of that specified in such subsection without paying the compensation for overtime employment prescribed therein if such employee is so employed—

* * * * *

(3) by an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products if—

(A) the annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes,

(B) more than 75 per centum of such enterprise's annual dollar volume of sales is made within the State in which such enterprise is located, and

(C) not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale,

and such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to him under section 206 of this title,

and if such employee receives compensation for employment in excess of twelve hours in any workday, or for employment in excess of fifty-six hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(c) For a period or periods of not more than three workweeks in the aggregate in any calendar year, or five workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (d) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection if such employee (1) is employed by such employer in an industry found by the Secretary to be of a seasonal nature, and (2) receives compensation for employment by such employer in excess of ten hours in any workday, or for employment by such employer in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

(d) For a period or periods of not more than three workweeks in the aggregate in any calendar year, or five workweeks in the aggregate in the case of an employer who does not qualify for the exemption in subsection (c) of this section, any employer may employ any employee for a workweek in excess of that specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer in an enterprise which is in an industry found by the Secretary—

(A) to be characterized by marked annually recurring seasonal peaks of operation at the places of first marketing or first processing of agricultural or horticultural commodities from farms if such industry is engaged in the handling, packing, preparing, storing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, or

(B) to be of seasonal nature and engaged in the handling, packing, storing, preparing, first processing, or canning of any perishable agricultural or horticultural commodities in their raw or natural state, and

(2) receives compensation f employment by such employer in excess of ten hours in any workday, o. for employment in excess of forty-eight hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which he is employed.

* * * * *

(j) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises shall be deemed to have violated subsection (a) of this section if, pursuant to an agreement or understanding arrived at between the employer and

the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(k) No public agency shall be deemed to have violated subsection (a) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if—

(1) in a work period of 28 consecutive days the employee receives for tours of duty which in the aggregate exceed 232 hours; or

(2) in the case of such an employee to whom a work period of at least 7 but less than 28 days applies, in his work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his work period as 232 hours bears to 28 days,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

(*l*) No employer shall employ any employee in domestic service in one or more households for a workweek longer than forty hours unless such employee receives compensation for such employment in accordance with subsection (a) of this section.

(m) For a period or periods of not more than fourteen workweeks in the aggregate in any calendar year, any employer may employ any employee for a workweek in excess of that specified in subsection (a) of this section without paying the compensation for overtime employment prescribed in such subsection, if such employee—

(1) is employed by such employer—

(A) to provide services (including stripping and grading) necessary and incidental to the sale at auction of green leaf tobacco of type 11, 12, 13, 14, 21, 22, 23, 24, 31, 35, 36, or 37 (as such types are defined by the Secretary of Agriculture), or in auction sale, buying, handling, stemming, redrying. packing, and storing of such tobacco,

(B) in auction sale, buying, handling, sorting, grading, packing, or storing green leaf tobacco of type 32 (as such type is defined by the Secretary of Ariculture), or

(C) in auction sale, buying, handling, stripping, sorting, grading, sizing, packing, or stemming prior to packing, of perishable cigar leaf tobacco of type 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 61, or 62 (as such types are defined by the Secretary of Agriculture); and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed. An employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section.

(n) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (a) of this section applies there shall be excluded the hours such employee was employed in charter activities by such employer if (1) the employee's employment in such activities was pursuant to an agreement or understanding with his employer arrived at before engaging in such employment, and (2) if employment in such activities is not part of such employee's regular employment. (As amended Apr. 8, 1974, Pub. L. 93–259, §§ 6(c)(1)(A), (B), 7(b)(2), 9(a), 12(b), 19(a)–(d), 21(a), 88 Stat. 60, 62, 64, 66, 68.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–259, § 19(a), (b), substituted "seven workweeks" for "ten workweeks", "ten workweeks" for "fourteen workweeks" and "forty-eight hours" for "fifty hours" effective May 1, 1974. Pub. L. 93–259, § 19(c), substituted "five workweeks" for "seven workweeks" and "seven workweeks" for "ten workweeks" effective Jan. 1, 1975. Pub. L. 93–259, § 19(d), substituted "three workweeks" for "five workweeks" and "five workweeks" for "seven workweeks" effective Jan. 1, 1976. Pub. L. 93–259, § 19(e), repealed subsec. (c) effective Dec. 31, 1976.

Subsec. (d). Pub. L. 93–259, § 19(a), (b), substituted "seven workweeks" for "ten workweeks", "ten workweeks" for "fourteen workweeks" and "forty-eight hours" for "fifty hours" effective May 1, 1974. Pub. L. 93–259, § 19(c), substituted "five workweeks" for "seven workweeks" and "seven workweeks" for "ten workweeks" effective Jan. 1, 1975. Pub. L. 93–259, § 19(d), substituted "three workweeks" for "five workweeks" and "five workweeks" for "seven workweeks" effective Jan. 1, 1976. Pub. L. 93–259, § 19(e), repealed subsec. (d) effective Dec. 31, 1976.

Subsec. (j). Pub. L. 93–259, § 12(b), extended provision excepting from being considered a subsec. (a) violation agreements or undertakings between employers and employees respecting consecutive work period and overtime compensation to agreements between employers engaged in operation of an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises and employees respecting consecutive work period and overtime compensation.

Subsec. (k). Pub. L. 93–259, § 6(c)(1)(A), added subsec. (k), effective Jan. 1, 1975. Pub. L. 93–259, § 6(c)(1)(B), substituted "232 hours" for "240 hours", wherever appearing, effective Jan. 1, 1976. Pub. L. 93–259, § 6(c)(1)(C), substituted "216 hours" for "232 hours", wherever appearing, effective Jan. 1, 1977. Pub. L. 93–259, § 6(c)(1)(D), effective Jan. 1, 1978, substituted in par. (1) "exceed the lesser of (A) 216 hours, or (B) the average number of hours (as determined by the Secretary pursuant to section 6(c)(3) of the Fair Labor Standards Amendments of 1974) in tours of duty of employees engaged in such activities in work periods of 28 consecutive days in calendar year 1975" for "exceed 216 hours" and inserted in par. (2) "(or if lower, the number of hours referred to in clause (B) of paragraph (1)".

Subsec. (*l*). Pub. L. 93–259, § 7(b)(2), added subsec. (*l*).

Subsec. (m). Pub. L. 93–259, § 9(a), added subsec. (m).

Subsec. (n). Pub. L. 93–259, § 21(a), added subsec. (n).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment of section by sections 7(b)(2), 9(a), 12(b), 19(a) and 21(a) of Pub. L. 93–259 effective May 1, 1974,

see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Section 6(c)(1) of Pub. L. 93–259 provided in part that enactment and amendment of subsec. (k) of this section by section 6(c)(1) of Pub. L. 93–259 shall be effective Jan. 1, 1975, 1976, 1977, and 1978, respectively.

Section 19(c)–(e) of Pub. L. 93–259 provided that amendment and repeal of subsecs. (c) and (d) of this section by section 19(c)–(e) of Pub. L. 93–259 shall be effective Jan. 1, 1975, Jan. 1, 1976, and Dec. 31, 1976, respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 203, 213 to 216, 216b, 218 of this title; title 41 sections 35, 355.

§ 208. Wage orders in Puerto Rico and the Virgin Islands.

(a) The policy of this chapter with respect to industries or enterprises in Puerto Rico and the Virgin Islands engaged in commerce or in the production of goods for commerce is to reach as rapidly as is economically feasible without substantially curtailing employment the objective of the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) of this title but for section 206(c) of this title. The Administrator shall from time to time convene an industry committee or committees, appointed pursuant to section 205 of this title, and any such industry committee shall from time to time recommend the minimum rate or rates of wages to be paid under section 206 of this title by employers in Puerto Rico or the Virgin Islands, or in Puerto Rico and the Virgin Islands, engaged in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce in any such industry or classifications therein. Minimum rates of wages established in accordance with this section which are not equal to the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title shall be reviewed by such a Committee once during each biennial period, beginning with the biennial period commencing July 1, 1958, except that the Secretary, in his discretion, may order an additional review during any such biennial period.

(b) Upon the convening of any such industry committee, the Administrator shall refer to it the question of the minimum wage rate or rates to be fixed for such industry. The industry committee shall investigate conditions in the industry and the committee, or any authorized subcommittee thereof, shall after due notice hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under this chapter. The committee shall recommend to the Administrator the highest minimum wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry, and will not give any industry in Puerto Rico or in the Virgin Islands a competitive advantage over any industry in the United States outside of Puerto Rico and the Virgin Islands; except that the committee shall recommend to the Secretary the minimum wage rate prescribed in section 206(a) or 206(b) of this title, which would be applicable but for section 206(c) of this title, unless there is substantial documentary evidence, including pertinent unabridged profit and loss statements and balance sheets for a representative period of years or in the case of employees of public agencies other appropriate information, in the record which establishes that the industry, or a predominant portion thereof, is unable to pay that wage.

(c) The industry committee shall recommend such reasonable classifications within any industry as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum wage rate (not in excess of that in effect under paragraph (1) or (5) of section 206(a) of this title (as the case may be)) which (1) will not substantially curtail employment in such classification and (2) will not give a competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum wage rate which the committee determines will not substantially curtail employment in such classification. In determining whether such classification should be made in any industry, in making such classifications, and in determining the minimum wage rates for such classifications, no classifications shall be made, and no minimum wage rate shall be fixed, solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

(1) competitive conditions as affected by transportation, living, and production costs;

(2) the wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) the wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

No classification shall be made under this section on the basis of age or sex.

* * * * *

(As amended Apr. 8, 1974, Pub. L. 93–259, § 5(c)(1), (d), 88 Stat. 58.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–259, § 5(d)(1), (2), substituted in first sentence "the minimum wage rate which would apply in each such industry under paragraph (1) or (5) of section 206(a) but for section 206(c) of this title" for "the minimum wage prescribed in paragraph (1) of section 206(a) of this title in each such industry" and in third sentence "the otherwise applicable minimum wage rate in effect under paragraph (1) or (5) of section 206(a) of this title" for "the minimum wage rate prescribed in paragraph (1) of section 206(a) of this title".

Subsec. (b). Pub. L. 93–259, § 5(c)(1), required the committee to recommend the minimum wage rate prescribed in section 206(a) or 206(b), which would be applicable but for section 206(c) of this title, unless the industry is unable to pay that wage as established by substantial documentary evidence or in the case of employees of public agencies other appropriate information in the record.

Subsec. (c). Pub. L. 93–259, § 5(d)(3), substituted "in effect under paragraph (1) or (5) of section 206(a) of this title (as the case may be)" for "prescribed in paragraph (1) of section 206(a) of this title".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 205, 206, of this title.

§ 210. Court review of wage orders in Puerto Rico and the Virgin Islands.

(a) Any person aggrieved by an order of the Secretary issued under section 208 of this title may obtain a review of such order in the United States Court of Appeals for any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within 60 days after the entry of such order a written petition praying that the order of the Secretary be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record of the industry committee upon which the order complained of was entered, as provided in section 2112 of Title 28. Upon the filing of such petition such court shall have exclusive jurisdiction to affirm, modify (including provision for the payment of an appropriate minimum wage rate), or set aside such order in whole or in part, so far as it is applicable to the petitioner. The review by the court shall be limited to questions of law, and findings of fact by such industry committee when supported by substantial evidence shall be conclusive. No objection to the order of the Secretary shall be considered by the court unless such objection shall have been urged before such industry committee or unless there were reasonable grounds for failure so to do. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence may materially affect the result of the proceeding and that there were reasonable grounds for failure to adduce such evidence in the proceedings before such industry committee, the court may order such additional evidence to be taken before an industry committee and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. Such industry committee may modify the initial findings by reason of the additional evidence so taken, and shall file with the court such modified or new findings which if supported by substantial evidence shall be conclusive, and shall also file its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

* * * * *

(As amended Apr. 8, 1974, Pub. L. 93–259, § 5(c)(2), 88 Stat. 58.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–259 inserted in the third sentence after "modify" the parenthetical phrase "(including provision for the payment of an appropriate minimum wage rate)".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

§ 212. Child labor provisions.

* * * * *

(d) In order to carry out the objectives of this section, the Secretary may by regulation require employers to obtain from any employee proof of age. (As amended Apr. 8, 1974, Pub. L. 93–259, § 25(a), 88 Stat. 72.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–259 added subsec. (d).

EFFECTIVE DATE OF 1974 AMENDMENT

Subsec. (d) effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 211, 213, 215, 216 of this title.

§ 213. Exemptions.

(a) The provisions of sections 206 (except subsection (d) in the case of paragraph (1) of this subsection) and section 207 of this title shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act, except that an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in his workweek which he devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40 per centum of his hours worked in the workweek are devoted to such activities); or

(2) any employee employed by any retail or service establishment (except an establishment or employee engaged in laundering, cleaning, or repairing clothing or fabrics or an establishment engaged in the operation of a hospital, institution, or school described in section 203(s)(4) of this title, if more than 50 per centum of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located, and such establishment is not in an enterprise described in section 203(s) of this title or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated). A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or

* * * * *

(9) Repealed. Pub. L. 93–259, § 23(a)(1), Apr. 8, 1974, 88 Stat. 69.

(10) any switchboard operator employed by an independently owned public telephone company which has not more than seven hundred any fifty stations; or

(11) Repealed. Pub. L. 93–259, § 10(a), Apr. 8, 1974, 88 Stat. 63.

(12) any employee employed as a seaman on a vessel other than an American vessel; or

(13), (14) Repealed. Pub. L. 93–259, §§ 9(b)(1), 23(b)(1), Apr. 8, 1974, 88 Stat. 63, 69.

(15) any employee employed on a casual basis in domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).

(b) The provisions of section 207 of this title shall not apply with respect to—

(1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 304 of Title 49; or

(2) any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of part I of the Interstate Commerce Act; or

(3) any employee of a carrier by air subject to the provisions of sections 181 to 188 of Title 45; or

(4) any employee who is employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof, and who receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

* * * * *

(7) any driver, operator, or conductor employed by an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed, or

(8)(A) any employee (other than an employee of a hotel or motel who performs maid or custodial services) who is employed by an establishment which is a hotel, motel, or restaurant and who receives compensation for employment in excess of forty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(B) any employee of a hotel or motel who performs maid or custodial services and who receives compensation for employment in excess of forty-six hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

* * * * *

(10)(A) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(B) any salesman primarily engaged in selling trailers, boats, or aircraft, if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers; or

* * * * *

(15) any employee engaged in the processing of maple sap into sugar (other than refined sugar) or syrup; or

* * * * *

(18) any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of members of clubs and who receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(19) any employee of a bowling establishment if such employee receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed;

(20) any employee of a public agency who in any workweek is employed in fire protection activities or any employee of a public agency who in any workweek is employed in law enforcement activities (including security personnel in correctional institutions), if the public agency employs during the workweek less than 5 employees in fire protection or law enforcement activities, as the case may be; or

(21) any employee who is employed in domestic service in a household and who resides in such household; or

(22) any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco; or

(23) any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under paragraph (2) of subsection (a) of this section with respect to whom the provisions of sections 206 and 207 of this title would not otherwise apply, who is engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month, and who receives compensation for employment in excess of forty-four hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed; or

(24) any employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children—

(A) who are orphans or one of whose natural parents is deceased, or

(B) who are enrolled in such institution and reside in residential facilities of the institution, while such children are in residence at such institution, if such employee and his spouse reside in such facilities, receive, without cost, board and lodging from such institution, and are together compensated, on a cash basis, at an annual rate of not less than $10,000; or

(25) any employee who is engaged in ginning of cotton for market in any place of employment located in a county where cotton is grown in commercial quantities and who receives compensation for employment in excess of—

(A) sixty hours in any workweek for not more than six workweeks in a year.

(B) fifty-six hours in any workweek for not more than four workweeks in that year,

(C) forty-eight hours in any workweek for not more than two workweeks in that year,

(D) forty-four hours in any workweek for not more than two workweeks in that year, and

(E) forty hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or

(26) any employee who is engaged in the processing of sugar beets, sugar beet molasses, or sugarcane into sugar (other than refined sugar) or syrup and who receives compensation for employment in excess of—

(A) sixty hours in any workweek for not more than six workweeks in a year,

(B) fifty-six hours in any workweek for not more than four workweeks in that year,

(C) forty-eight hours in any workweek for not more than two workweeks in that year, and

(D) forty-four hours in any workweek for not more than two workweeks in that year, and

(E) forty hours in any other workweek in that year,

at a rate not less than one and one-half times the regular rate at which he is employed; or

(27) any employee employed by an establishment which is a motion picture theater; or

(28) any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.

(c)(1) Except as provided in paragraph (2), the provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—

(A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are (because of subsection (a)(6)(A) of this section) required to be paid at the wage rate prescribed by section 206(a)(5) of this title,

(B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or

(C) is fourteen years of age or older.

* * * * *

(g) The exemption from section 206 of this title provided by paragraphs (2) and (6) of subsection (a) of this section shall not apply with respect to any employee employed by an establishment (1) which controls, is controlled by, or is under common control with, another establishment the activities of which are not related for a common business purpose to, but materially support the activities of the establishment employing such employee; and (2) whose annual gross volume of sales made or business done, when combined with the annual gross volume of sales made or business done by each establishment which controls, is controlled by, or is under common control with, the establishment employing such employee, exceeds $10,000,000 (exclusive of excise taxes at the retail level which are separately stated), except that the exemption from section 206 of this title provided by paragraph (2) of subsection (a) of this section shall apply with respect to any establishment described in this subsection which has an annual dollar volume of sales which would permit it to qualify for the exemption provided in paragraph (2) of subsection (a) of this section if it were in an enterprise described in section 203(s) of this title.

(h) The provisions of section 207 of this title shall not apply for a period or periods of not more than fourteen workweeks in the aggregate in any calendar year to any employee who—

(1) is employed by such employer—

(A) exclusively to provide services necessary and incidental to the ginning of cotton in an establishment primarily engaged in the ginning of cotton;

(B) exclusively to provide services necessary and incidental to the receiving, handling, and storing of raw cotton and the compressing of raw cotton when performed at a cotton warehouse or compress-warehouse facility, other than one operated in conjunction with a cotton mill, primarily engaged in storing and compressing;

(C) exclusively to provide services necessary and incidental to the receiving, handling, storing, and processing of cottonseed in an establishment primarily engaged in the receiving, handling, storing, and processing of cottonseed; or

(D) exclusively to provide services necessary and incidental to the processing of sugar cane or sugar beets in an establishment primarily engaged in the processing of sugar cane or sugar beets; and

(2) receives for—

(A) such employment by such employer which is in excess of ten hours in any workday, and

(B) such employment by such employer

which is in excess of forty-eight hours in any workweek,

compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Any employer who receives an exemption under this subsection shall not be eligible for any other exemption under this section or section 207 of this title. (As amended June 23, 1972, Pub. L. 92–318, title IX, § 906(b)(1), 86 Stat. 375; Apr. 8, 1974, Pub. L. 93–259, §§ 6(c)(2), 7(b)(3), (4), 8(a), (b), 9(b), 10(a), (b)(1), (2), 11(a), (b), 12(a), 13(a), (b), 14, 15(a), 16(a), 17, 18, 20(a), (b), (c), 21(b)(1), (2), 22, 23, 25(b), 87 Stat. 61–69, 72.)

AMENDMENTS

1974—Subsec. (a)(2). Pub. L. 93–259, § 8(a), substituted "$225,000" for "$250,000" effective Jan. 1, 1975. Pub. L. 93–259, § 8(b), substituted "$200,000" for "$225,000" effective Jan. 1, 1976. Pub. L. 93–259, § 8(c), deleted "or such establishment has an annual dollar volume of sales which is less than $200,000 (exclusive of excise taxes at the retail level which are separately stated)" which followed "section 203(s) of this title" effective Jan. 1, 1977.

Subsec. (a)(9). Pub. L. 93–259, § 23(a)(1), repealed exemption provision respecting any employee employed by an establishment which is a motion picture theater, which is now covered by subsec. (b)(27) of this section.

Subsec. (a)(11). Pub. L. 93–259, § 10(a), repealed exemption provision respecting any employee or proprietor in a retail or service establishment which qualifies as an exempt retail or service establishment under former cl. (2) of subsec. (a) with respect to whom the provisions of section 206 and 207 of this title would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month.

Subsec. (a)(13). Pub. L. 93–259, § 23(b)(1), repealed exemption provision respecting any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight, which is now covered by subsec. (b)(28) of this section.

Subsec. (a)(14). Pub. L. 93–259, § 9(b)(1), repealed exemption provision respecting any agricultural employee employed in the growing and harvesting of shade-grown tobacco who is engaged in the processing (including, but not limited to, drying, curing, fermenting, bulking, rebulking, sorting, grading, aging, and baling) of such tobacco, prior to the stemming process, for use as cigar wrapper tobacco, which is now covered by subsec. (b)(22) of this section.

Subsec. (a)(15). Pub. L. 93–259, § 7(b)(3), added par. (15).

Subsec. (b)(2). Pub. L. 93–259, § 23(c), amended par. (2) (insofar as it relates to pipeline employees), inserting "engaged in the operation of a common carrier by rail and" after "employer".

Subsec. (b)(4). Pub. L. 93–259, § 11(a), effective May 1, 1974, inserted "who is" following "employee" and ", and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed" preceding the semi-colon. Pub. L. 93–259, § 11(b), substituted "forty-four hours" for "forty-eight hours" effective one year after May 1, 1974. Pub. L. 93–259, § 11(c), repealed subsec. (b)(4) effective two years after May 1, 1974.

Subsec. (b)(7). Pub. L. 93–259, § 21(b)(1), substituted "(regardless of whether or not such railway or carrier is public or private or operated for profit or not for profit), if such employee receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed" for ", if the rates and services of such railway or carrier are subject to regulation by a State or local agency" effective May 1, 1974. Pub. L. 93–259, § 21(b)(2), substituted "forty-four hours" for "forty-eight hours" effective one year after May 1, 1974. Pub. L. 93–259, § 21(b)(3) repealed subsec. (b)(7) effective two years after May 1, 1974.

Subsec. (b)(8). Pub. L. 93–259, §§ 12(a), 13(a), effective May 1, 1974, insofar as relating to nursing home employees, struck out exemption provision respecting any employee who is employed by an establishment which is an institution (other than a hospital) primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises, and receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed, and insofar as relating to hotel, motel, and restaurant employees, substituted "(A) any employee (other than an employee of a hotel or motel who performs maid or custodial services) who is" for "any employee", inserted preceding the semicolon "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed", and added subpar. (B). Pub. L. 93–259, § 13(b), effective one year after May 1, 1974, substituted "forty-six hours" for "forty-eight hours" in subparas. (A) and (B). Pub L. 93–259, § 13(c), effective two years after May 1, 1974, substituted "forty-four hours" for "forty-six hours" in subpar. (B). Pub. L. 93–259, § 13(d), repealed subsec. (b)(8)(B) and eliminated the designation (A), effective three years after May 1, 1974.

Subsec. (b)(10). Pub. L. 93–259, § 14, incorporated existing paragraph in provisions designated as subpar. (A), deleted from the list references to trailers and aircraft, inserted reference to implements, and added subpar. (B) incorporating the references to trailers and aircraft.

Subsec. (b)(15). Pub. L. 93–259, § 20(a), deleted exemption provision respecting any employee engaged in ginning of cotton for market, in any place of employment located in a county where cotton is grown in commercial quantities or in the processing of sugar beets, sugar-beet molasses, and sugarcane into sugar, which is now covered by subsec. (b)(25) and (26) of this section.

Subsec. (b)(18). Pub. L. 93–259, § 15(a), effective May 1, 1974, inserted "and who receives compensation for employment in excess of forty-eight hours in any workweek at a rate not less than one and one-half times the regular rate at which he is employed." Pub. L. 93–259, § 15(b), effective one year after May 1, 1974, substituted "forty-four hours" for "forty-eight hours." Pub. L. 93–259, § 15(c), repealed subsec. (b)(18) effective two years after May 1, 1974.

Subsec. (b)(19). Pub. L. 93–259, § 16(a), effective one year after May 1, 1974, substituted "forty-four hours" for "forty-eight hours". Pub. L. 93–259, § 16(b), repealed subsec. (b)(19), effective two years after May 1, 1974.

Subsec. (b)(20). Pub. L. 93–259, § 6(c)(2)(A), added par. (20) effective May 1, 1974. Pub. L. 93–259, § 6(c)(2)(B), effective Jan. 1, 1975, made maximum hours provisions inapplicable during any workweek to any employee of a public agency employing during the workweek less than 5 employees.

Subsec. (b)(21). Pub. L. 93–259, § 7(b)(4), added par. (21).

Subsec. (b)(22). Pub. L. 93–259, § 9(b)(2), added par. (22).

Subsec. (b)(23). Pub. L. 93–259, § 10(b)(1), added par. (23), effective May 1, 1974. Pub. L. 93–259, § 10(b)(2), substituted "forty-four hours" for "forty-eight hours" effective one year after May 1, 1974. Pub. L. 93–259, § 10(b)(3), repealed subsec. (b)(23), effective two years after May 1, 1974.

Subsec. (b)(24). Pub. L. 93–259, § 17, added par. (24).

Subsec. (b)(25). Pub. L. 93–259, § 20(b)(1), added par. (25) effective May 1, 1974. Pub. L. 93–259, § 20(b)(2), effective Jan. 1, 1975, substituted "sixty-six" for "seventy-two" in subpar. (A), "sixty" for "sixty-four" in subpar. (B), and "forty-six hours in any workweek for not more

than two workweeks in that year, and" for "forty-eight hours in any other workweek in that year," in subpar. (D), and added subpar. (E). Pub. L. 93–259, § 20(b)(3), effective Jan. 1, 1976, substituted "sixty" for "sixty-six", "fifty-six" for "sixty", "forty-eight" for "fifty", "forty-four" for "forty-six", and "forty" for "forty-four".

Subsec. (b)(26). Pub. L. 93–259, § 20(c)(1), added par. (26) effective May 1, 1974. Pub. L. 93–259, § 20(c)(2), effective Jan. 1, 1975, substituted "sixty-six" for "seventy-two" in subpar. (A), "sixty" for "sixty-four" in subpar. (B), and "forty-six hours in any workweek for not more than two workweeks in that year, and" for "forty-eight hours in any other workweek in that year," in subpar. (D), and added subpar. (E). Pub. L. 93–259, § 20(c)(3), effective Jan. 1, 1976, substituted "sixty" for "sixty-six", "fifty-six" for "sixty", "forty-eight" for "fifty", "forty-four" for "forty-six", and "forty" for "forty-four".

Subsec. (b)(27). Pub. L. 93–259, § 23(a)(2), added par. (27).

Subsec. (b)(28). Pub. L. 93–259, § 23(b)(2), added par. (28).

Subsec. (c)(1). Pub. L. 93–259, § 25(b), deleted "with respect" following "shall not apply", changed the period of the sentence to a comma, and added", if such employee—" and subpars. (A)–(C).

Subsec. (g) Pub. L. 93–259, § 18, added subsec. (g).

Subsec. (h). Pub. L. 93–259, § 22, added subsec. (h).

1972—Subsec. (a). Pub. L. 92–318 inserted "(except subsection (d) in the case of paragraph (1) of this subsection)" following introductory text "sections 206".

EFFECTIVE DATE OF 1974 AMENDMENT

Section 8(a)–(c) of Pub. L. 93–259 provided that amendment of subsec. (a)(2) of this section by such section shall be effective Jan. 1, 1975, 1976, and 1977, respectively.

Section 11(b), (c) of Pb. L. 93–259 provided in part that amendment and repeal of subsec. (b)(4) of this section by section 11(b), (c) of Pub. L. 93–259 shall be effective one year and two years after May 1, 1974, respectively.

Section 21(b)(2), (3) of Pub. L. 93–259 provided that amendment and repeal of subsec. (b)(7) of this section by section 21(b)(2), (3) of Pub. L. 93–259 shall be effective one year and two years after May 1, 1974, respectively.

Section 13(b)–(d) of Pub. L. 93–259 provided that amendment of subsec. (b)(8) of this section by section 13(b)–(d) of Pub. L. 93–259 shall be effective one year, two years, and three years after May 1, 1974, respectively.

Section 15(b), (c) of Pub. L. 93–259 provided that amendment and repeal of subsec. (b)(18) of this section by section 15(b), (c) of Pub. L. 93–259 shall be effective one year and two years after May 1, 1974, respectively.

Section 16(a), (b) of Pub. L. 93–259 provided that amendment and repeal of subsec. (b)(19) of this section by section 16(a), (b) of Pub. L. 93–259 shall be effective one year and two years after May 1, 1974, respectively.

Section 6(c)(2)(B) of Pub. L. 93–259 provided that amendment of subsec. (b)(20) of this section by such section shall be effective Jan. 1, 1975.

Section 10(b)(2), (3) of Pub. L. 93–259 provided that amendment and repeal of subsec. (b)(23) of this section by section 10(b)(2), (3) of Pub. L. 93–259 shall be effective one year and two years after May 1, 1974, respectively.

Section 20(b)(2), (3) of Pub. L. 93–259 provided in part that amendment of subsec. (b)(25) of this section by section 20(b)(2), (3) of Pub. L. 93–259 shall be effective Jan. 1, 1975, and 1976, respectively.

Section 20(c)(2), (3) of Pub. L. 93–259 provided in part that amendment of subsec. (b)(26) of this section by section 20(b)(2), (3) of Pub. L. 93–259 shall be effective Jan. 1, 1975, and 1976, respectively.

Addition of subsecs. (a)(15), (b)(20)–(28), (g), (h), amendment of subsecs. (b)(2), (4), (7), (8), (10), (15), (18), (c)(1), and repeal of subsecs. (a)(9), (11), (13), and (14) of this section by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of 1970 Reorg. Plan No. 2, redesignated the Bureau of the Budget as the Office of Management and Budget. See Change of Name note set out under this section in the main volume.

PIPELINE EMPLOYEES UNDER SUBSEC. (b)(2)

Section 23(c) of Pub. L. 93–259 provided in part for amendment of subsec. (b)(2) of this section "insofar as it relates to pipeline employees".

PUBLIC AGENCY EMPLOYEES IN FIRE PROTECTION AND LAW ENFORCEMENT ACTIVITIES; STUDIES IN 1976 OF 1975 TOURS OF DUTY

Section 6(c)(3) of Pub. L. 93–259 provided that: "The Secretary of Labor shall in the calendar year beginning January 1, 1976, conduct (A) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 1938 [section 207 of this title] by section 13(b)(20) of such Act [subsec. (b)(20) of this section] of public agencies who are employed in fire protection activities, and (B) a study of the average number of hours in tours of duty in work periods in the preceding calendar year of employees (other than employees exempt from section 7 of the Fair Labor Standards Act of 193^ [section 207 of this title] by section 13(b)(20) of such Act [subsec. (b)(20) of this section]) of public agencies who are employed in law enforcement activities (including security personnel in correctional institutions). The Secretary shall publish the results of each such study in the Federal Register."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 204, 206, 207, 216, 218, 845, 848 of this title; title 5 sections 5341, 5343, 5349; title 42 sections 300e–9, 3056.

§ 214. Learners, apprentices, students, and handicapped workers.

(a) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe.

(b)(1)(A) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide, in accordance with subparagraph (B), for the employment, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206(c of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) in retail or service establishments.

(B) Except as provided in paragraph (4)(B), during any month in which full-time students are to be employed in any retail or service establishment under certificates issued under this subsection the proportion of student hours of employment to the total

hours of employment of all employees in such establishment may not exceed—

(i) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) were covered by this chapter before the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period,

(II) the maximum proportion for any corresponding month of student hours of employment to the total hours of employment of all employees in such establishment applicable to the issuance of certificates under this section at any time before the effective date of the Fair Labor Standards Amendments of 1974 for the employment of students by such employer, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater;

(ii) in the case of retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered for the first time on or after the effective date of the Fair Labor Standards Amendments of 1974—

(I) the proportion of hours of employment of students in such establishment to the total hours of employment of all employees in such establishment for the corresponding month of the twelve-month period immediately prior to the effective date of such Amendments.

(II) the proportion of student hours of employment to the total hours of employment of all employees in such establishment for the corresponding month of the immediately preceding twelve-month period, or

(III) a proportion equal to one-tenth of the total hours of employment of all employees in such establishment,

whichever is greater; or

(iii) in the case of a retail or service establishment for which records of student hours worked are not available, the proportion of student hours of employment to the total hours of employment of all employees based on the practice during the immediately preceding twelve-month period in (I) similar establishments of the same employer in the same general metropolitan area in which such establishment is located, (II) similar establishments of the same or nearby communities if such establishment is not in a metropolitan area, or (III) other establishments of the same general character operating in the community or the nearest comparable community.

For purpose of clauses (i), (ii), and (iii) of this subparagraph, the term "student hours of employment" means hours during which students are employed in a retail or service establishment under certificates issued under this subsection.

(2) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(a)(5) of this title or not less than $1.30 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) in any occupation in agriculture.

(3) The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by special certificate issued under a regulation or order provide for the employment by an institution of higher education, at a wage rate not less than 85 per centum of the otherwise applicable wage rate in effect under section 206 of this title or not less than $1.60 an hour, whichever is the higher (or in the case of employment in Puerto Rico or the Virgin Islands not described in section 205(e) of this title, at a wage rate not less than 85 per centum of the wage rate in effect under section 206(c) of this title), of full-time students (regardless of age but in compliance with applicable child labor laws) who are enrolled in such institution. The Secretary shall by regulation prescribe standards and requirements to insure that this paragraph will not create a substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized by this paragraph is applicable.

(4)(A) A special certificate issued under paragraph (1), (2), or (3) shall provide that the student or students for whom it is issued shall, except during vacation periods, be employed on a part-time basis and not in excess of twenty hours in any workweek.

(B) If the issuance of a special certificate under paragraph (1) or (2) for an employer will cause the number of students employed by such employer under special certificates issued under this subsection to exceed four, the Secretary may not issue such a special certificate for the employment of a student by such employer unless the Secretary finds employment of such student will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under special certificates issued under this subsection. If the issuance of a special certificate under paragraph (1) or (2) for an employer will not cause the number of students employed by such employer under special certificates issued under this subsection to exceed four—

(i) the Secretary may issue a special certificate under paragraph (1) or (2) for the employment of a student by such employer if such employer certifies to the Secretary that the employment of such student will not reduce the full-time employment opportunites of persons other than those employed under special certificates issued under this subsection, and

(ii) in the case of an employer which is a retail or service establishment, subparagraph (B) of

paragraph (1) shall not apply with respect to the issuance of special certificates for such employer under such paragraph.

The requirement of this subparagraph shall not apply in the case of the issuance of special certificates under paragraph (3) for the employment of full-time students by institutions of higher education; except that if the Secretary determines that an institution of higher education is employing students under certificates issued under paragraph (3) but in violation of the requirements of that paragraph or of regulations issued thereunder, the requirements of this subparagraph shall apply with respect to the issuance of special certificates under paragraph (3) for the employment of students by such institution.

(C) No special certificate may be issued under this subsection unless the employer for whom the certificate is to be issued provides evidence satisfactory to the Secretary of the student status of the employees to be employed under such special certificate.

(c)(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment under special certificates of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age or physical or mental deficiency or injury, at wages which are lower than the minimum wage applicable under section 206 of this title but not less than 50 per centum of such wage and which are commensurate with those paid nonhandicapped workers in industry in the vicinity for essentially the same type, quality, and quantity of work.

(2) The Secretary, pursuant to such regulations as he shall prescribe and upon certification of the State agency administering or supervising the administration of vocational rehabilitation services, may issue special certificates for the employment of—

(A) handicapped workers engaged in work which is incidental to training or evaluation programs, and

(B) multihandicapped individuals and other individuals whose earning capacity is so severely impaired that they are unable to engage in competitive employment,

at wages which are less than those required by this subsection and which are related to the worker's productivity.

(3)(A) The Secretary may by regulation or order provide for the employment of handicapped clients in work activities centers under special certificates at wages which are less than the minimums applicable under section 206 of this title or prescribed by paragraph (1) of this subsection and which constitute equitable compensation for such clients in work activities centers.

(B) For purposes of this section, the term "work activities centers" shall mean centers planned and designed exclusively to provide therapeutic activities for handicapped clients whose physical or mental impairment is so severe as to make their productive capacity inconsequential.

(d) The Secretary may be regulation or order provide that sections 206 and 207 of this title shall not apply with respect to the employment by any elementary or secondary school of its students if such employment constitutes, as determined under regulations prescribed by the Secretary, an integral part of the regular education program provided by such school and such employment is in accordance with applicable child labor laws. (As amended Apr. 8, 1974, Pub. L. 93–259, § 24(a), (b), 88 Stat. 69, 72.)

REFERENCES IN TEXT

Effective date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (b)(1)(B)(i), (ii), means May 1, 1974, except as otherwise specifically provided, under provisions of section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–259, § 24(a), added subsec. (a) and struck out former subsec. (a) which had provided:

"The Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for the employment of learners, of apprentices, and of messengers employed primarily in delivery letters and messages, under special certificates issued pursuant to regulations of the Secretary, at such wages lower than the minimum wage applicable under section 206 of this title and subject to such limitations as to time, number, proportion, and length of service as the Secretary shall prescribe."

Subsec. (b). Pub. L. 93–259, § 24(a), added subsec. (b) and struck out former subsec. (b) which had provided:

"The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment of full-time students, regardless of age but in compliance with applicable child labor laws, on a part-time basis in retail or service establishments (not to exceed twenty hours in any workweek) or on a part-time or full-time basis in such establishments during school vacations, under special certificates issued pursuant to regulations of the Secretary, at a wage rate not less than 85 per centum of the minimum wage applicable under section 206 of this title, except that the proportion of student hours of employment to total hours of employment of all employees in any establishment may not exceed (1) such proportion for the corresponding month of the twelve-month period preceding May 1, 1961, (2) in the case of a retail or service establishment whose employees (other than employees engaged in commerce or in the production of goods for commerce) are covered by this chapter for the first time on or after the effective date of the Fair Labor Standards Amendments of 1966, such proportion for the corresponding month of the twelve-month period immediately prior to such date, or (3) in the case of a retail or service establishment coming into existence after May 1, 1961, or a retail or service establishment for which records of student hours worked are not available, a proportion of student hours of employment to total hours of employment of all employees based on the practice during the twelve-month period preceding May 1, 1961, in (A) similar establishments of the same employer in the same general metropolitan area in which the new establishment is located, (B) similar establishments of the same employer in the same or nearby counties if the new establishment is not in a metropolitan area, or (C) other establishments of the same general character operating in the community or the nearest comparable community. Before the Secretary may issue a certificate under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection."

Subsec. (c). Pub. L. 93–259, § 24(a), (b), struck out former subsec. (c) and redesignated former subsec. (d) as (c). Former subsec. (c) had provided:

"The Secretary, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by certificate or order provide for the employment of full-time students, regardless of age but in compliance

with applicable child labor laws, on a part-time basis in agriculture (not to exceed twenty hours in any workweek) or on a part-time or full-time basis in agriculture during school vacations, at a wage rate not less than 85 per centum of the minimum wage applicable under section 206 of this title. Before the Secretary may issue a certificate or order under this subsection he must find that such employment will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under this subsection."

Subsec. (d). Pub. L. 93–259, § 24(b), added subsec. (d). Former subsec. (d) redesignated (c).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 204, 213, 215 of this title.

§ 215. Prohibited acts; prima facie evidence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 216 of this title; title 42 section 300e–9.

§ 216. Penalties; civil and criminal liability; injunction proceedings terminating right of action; waiver of claims; actions by Secretary of Labor; limitation of actions; savings provision.

* * * * *

(b) Any employer who violates the provisions of section 206 or section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similary situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The right provided by this subsection to bring an action by or on behalf of any employee, and the right of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the Secretary of Labor in an action under section 217 of this title in which restraint is sought of any further delay in the payment of unpaid minimum wages, or the amount of unpaid overtime compensation, as the case may be, owing to such employee under section 206 or section 207 of this title by an employer liable therefor under the provisions of this subsection.

(c) The Secretary is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 206 or 207 of this title, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. The Secretary may bring an action in any court of competent jurisdiction to recover the amount of unpaid minimum wages or overtime compensation and an equal amount as liquidated damages. The right provided by subsection (b) of this section to bring an action by or on behalf of any employee and of any employee to become a party plantiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary. Any sums thus recovered by the Secretary of Labor on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employee or employees affected. Any such sums not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts. In determining when an action is commenced by the Secretary of Labor under this subsection for the purposes of the statutes of limitations provided in section 255(a) of this title, it shall be considered to be commenced in the case of any individual claimant on the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint, or if his name did not so appear, on the subsequent date on which his name is added as a party plaintiff in such action.

* * * * *

(e) Any person who violates the provisions of section 212 of this title, relating to child labor, or any regulation issued under that section, shall be subject to a civil penalty of not to exceed $1,000 for each such violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The amount of such penalty, when finally determined, may be—

(1) deducted from any sums owing by the United States to the person charged;

(2) recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor; or

(3) ordered by the court, in an action brought for a violation of section 215(a)(4) of this title, to be paid to the Secretary.

Any administrative determination by the Secretary of the amount of such penalty shall be final, unless within fifteen days after receipt of notice thereof by certified mail the person charged with the violation takes exception to the determination that the violations for which the penalty is imposed occurred, in which event final determination of the penalty shall

be made in an administrative proceeding after opportunity for hearing in accordance with section 554 of Title 5, and regulations to be promulgated by the Secretary. Sums collected as penalties pursuant to this section shall be applied toward reimbursement of the costs of determining the violations and assessing and collecting such penalties, in accordance with the provisions of section 9a of this title. (As amended Apr. 8, 1974, Pub. L. 93–259, §§ 6(d)(1), 25(c), 26, 88 Stat. 61, 72, 73.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–259, § 6(d)(1), substituted in second sentence "maintained against any employer (including a public agency) in any Federal or State court" for "maintained in any court".

Subsec. (c). Pub. L. 93–259, § 26, in revising first three sentences, reenacted first sentence, substituting "Secretary" for "Secretary of Labor"; included in second sentence provision for an action by the Secretary for liquidated damaged and deleted requirement of a written request by an employee claiming unpaid minimum wages or unpaid overtime compensation with the Secretary of Labor prior to an action by the Secretary and proviso prohibiting any action in any case involving an issue of law not settled finally by the courts and depriving courts of jurisdiction of any action or proceeding involving the issue of law not settled finally; and substituted third sentence "The right provided by subsection (b) of this section to bring by or on behalf of any employee and of any employees to become a party plaintiff to any such action shall terminate upon the filing of a complaint by the Secretary in an action under this subsection in which a recovery is sought of unpaid minimum wages or unpaid overtime compensation under sections 206 and 207 of this title or liquidated or other damages provided by this subsection owing to such employee by an employer liable under the provisions of subsection (b) of this section, unless such action is dismissed without prejudice on motion of the Secretary." for "The consent of any employee to the bringing of any such action by the Secretary of Labor, unless such action is dismissed without prejudice on motion of the Secretary of Labor, shall constitute a waiver by such employee of any right of action he may have under subsection (b) of this section for such unpaid wages or unpaid overtime compensation and an additional equal amount as liquidated damages."

Subsec. (e). Pub. L. 93–259, § 25(c), added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 204, 255, 260, 626 of this title.

Chapter 9.—PORTAL-TO-PORTAL PAY

§ 255. Statute of limitations.

Any action commenced on or after May 14, 1947, to enforce any cause of action for unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act—

* * * * *

(c) if the cause of action accrued prior to May 14, 1947, the action shall not be barred by paragraph (b) of this section if it is commenced within one hundred and twenty days after May 14, 1947 unless at the time commenced it is barred by an applicable State statute of limitations;

(d) with respect to any cause of action brought under section 216(b) of this title against a State or a political subdivision of a State in a district court of the United States on or before April 18, 1973, the running of the statutory periods of limitation shall be deemed suspended during the period beginning with the commencement of any such action and ending one hundred and eighty days after the effective date of the Fair Labor Standards Amendments of 1974, except that such suspension shall not be applicable if in such action judgment has been entered for the defendant on the grounds other than State immunity from Federal jurisdiction.

(As amended Apr. 8, 1974, Pub. L. 93–259, § 6(d)(2)(A), 88 Stat. 61.)

REFERENCES IN TEXT

Effective Date of the Fair Labor Standards Amendments of 1974, referred to in subsec. (d), means May 1, 1974, except as otherwise specifically provided, under provisions of section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–259 added subsec. (d).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 216, 217, 256, 257, 262, 626 of this title.

§ 260. Liquidated damages.

In any action commenced prior to or on or after May 14, 1947 to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 216 of this title. (As amended Apr. 8, 1974, Pub. L. 93–259, § 6(d)(2)(B), 88 Stat. 62.)

AMENDMENTS

1974—Pub. L. 93–259 substituted "section 216 of this title" for "section 216(b) of this title".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Chapter 10.—DISCLOSURE OF WELFARE AND PENSION PLANS

REPEAL OF CHAPTER

Pub. L. 93–406, title I, § 111(a)(1), Sept. 2, 1974, 88 Stat. 851 (Employee Retirement Income Security Act of 1974) repealed this chapter effective January 1, 1975. Section 111(a)(1) of Pub. L. 93–406 provided in part that this chapter shall continue to apply to any conduct and events which occurred before January 1, 1975. See section 1031 of this title.

The Secretary of Labor was empowered by section 111(b)(2) of Pub. L. 93–406, in the case of any plan which has a plan year which begins

before January 1, 1975, and ends after December 31, 1974 to postpone by regulation the effective date of the repeal of any provision of this chapter until the beginning of the first plan year of such plan which begins after January 1, 1975. See section 1031(b)(2) of this title.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1140, 1141 of this title.

§ 308e. Advisory Council.

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a Council established by the President or an officer of the Federal Government, such Council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Council established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in Appendix to Title 5, Government Organization and Employees.

Chapter 11.—LABOR-MANAGEMENT REPORTING AND DISCLOSURE PROCEDURE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 186, 1111 of this title; title 42 section 2000e.

§ 441. Surety company reports; contents; waiver or modification of requirements respecting contents of reports.

Each surety company which issues any bond required by this Act or the Employee Retirement Income Security Act of 1974 shall file annually with the Secretary, with respect to each fiscal year during which any such bond was in force, a report, in such form and detail as he may prescribe by regulation, filed by the president and treasurer or corresponding principal officers of the surety company, describing its bond experience under each such Act, including information as to the premiums received, total claims paid, amounts recovered by way of subrogation, administrative and legal expenses and such related data and information as the Secretary shall determine to be necessary in the public interest and to carry out the policy of the Act. Notwithstanding the foregoing, if the Secretary finds that any such specific information cannot be practicably ascertained or would be uninformative, the Secretary may modify or waive the requirement for such information. (As amended Pub. L. 93-406, title I, § 111(a)(2)(D), Sept. 2, 1974, 88 Stat. 852.)

REFERENCES IN TEXT

"This Act", referred to in text, is the Labor-Management Reporting and Disclosure Act of 1959, which is classified to this chapter.

The Employee Retirement Income Security Act of 1974, referred to in text, is classified principally to section 1001 et seq. of this title. For additional classifications, see the Tables volume.

AMENDMENTS

1974—Pub. L. 93-406 substituted "Employee Retirement Income Security Act of 1974" for "Welfare and Pension Plans Disclosure Act".

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-406 effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 435, 437, 1031 of this title.

Chapter 12.—DEPARTMENT OF LABOR

§ 560. Reports and investigations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2048.

Chapter 14.—AGE DISCRIMINATION IN EMPLOYMENT

Sec.

633a. Nondiscrimination on account of age in Federal Government employment [New].

(a) Federal agencies affected.

(b) Enforcement by Civil Service Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission: compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification.

(c) Civil actions; jurisdiction; relief.

(d) Same; notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices.

(e) Duty of Government agency or official.

CROSS REFERENCES

Age discrimination in federally assisted programs, see section 6101 et seq. of Title 42, The Public Health and Welfare.

Civil rights, Federally assisted programs, see section 2000d et seq. of Title 42.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 42 sections 3012, 6103.

§ 621. Congressional statement of findings and purpose.

EFFECTIVE DATE; RULES AND REGULATIONS

Section 16, formerly 15 of Pub. L. 90-202, renumbered by Pub. L. 93-259, § 28(b)(1), Apr. 8, 1974, 88 Stat. 74, provided that "This Act [this chapter] shall become effective one hundred and eighty days after enactment [Dec. 15, 1967], except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act [this chapter] up to and additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment [Dec. 15, 1967] the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions."

§ 630. Definitions.

For the purposes of this chapter—

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trust, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided,* That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or

a corporation wholly owned by the Government of the United States.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States.

* * * * *

(f) The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision.

* * * * *

(As amended Pub. L. 93–259, § 28(a) (1)–(4), Apr. 8, 1974, 88 Stat. 74.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–259, § 28(a)(1), (2), substituted in first sentence "twenty" for "twenty-five" and, in second sentence, defined term "employer" to include a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, and deleted text excluding from such term a State or political subdivision thereof.

Subsec. (c). Pub. L. 93–259, § 28(a)(3), deleted text excluding from term "employment agency" an agency of a State or political subdivision of a State, but including the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (f). Pub. L. 93–259, § 28(a)(4), excepted from the term "employee" elected public officials, persons chosen by such officials for such officials' personal staff, appointees on policymaking level, and immediate advisers with respect to exercise of constitutional or legal powers of the public office but excluded from such exemption employees subject to civil laws of a State government, governmental agency, or political subdivision.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

§ 631. Age limits.

The prohibitions in this chapter shall be limited to individuals who are at least forty years of age but less than sixty-five years of age. (Pub. L. 90–202, § 12, Dec. 15, 1967, 81 Stat. 607.)

REFERENCES IN TEXT

Section is set out in this supplement to correct typographical error in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 622 of this title.

§ 633a. Nondiscrimination on account of age in Federal Government employment.

(a) Federal agencies affected.

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

(b) Enforcement by Civil Service Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission: compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification.

Except as otherwise provided in this subsection, the Civil Service Commission is authorized to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Civil Service Commission shall issue such rules, regulations, orders, and instructions as it deems necessay and appropriate to carry out its responsibilities under this section. The Civil Service Commission shall—

(1) be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a) of this section;

(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Civil Service Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Civil Service Commission shall be exercised by the Librarian of Congress.

(c) Civil actions; jurisdiction; relief.

Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.

(d) Same; notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices.

When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

(e) Duty of Government agency or official.

Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law (Pub. L. 90–202, § 15, as added Pub. L. 93–259, § 28(b)(2), Apr. 8, 1974, 88 Stat. 74.)

EFFECTIVE DATE

Section effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

CROSS REFERENCES

Equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin, see section 7151 of Title 5, Government Organization and Employees.

§ 634. Authorization of appropriations.

There are hereby authorized to be appropriated such sums, not in excess of $5,000,000 for any fiscal year, as may be necessary to carry out this chapter. (Pub. L. 90–202, § 17, formerly § 16, Dec. 15, 1967, 81 Stat. 608, renumbered and amended Pub. L. 93–259, § 28(a)(5), (b)(1), Apr. 8, 1974, 88 Stat. 74.)

AMENDMENTS

1974—Pub. L. 93–259 increased appropriations authorization to $5,000,000 from $3,000,000.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Chapter 15.—OCCUPATIONAL SAFETY AND HEALTH

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 section 2080; title 25 section 450m.

§ 655. Standards.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1942.

§ 667. State jurisdiction and plans.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1942.

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FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

Occupational safety and health programs for federal employees and establishment of Federal Advisory Council on Occupational Safety and Health, see Ex. Ord. No. 11807, Sept. 28, 1974, 39 F.R. 35559, set out as a note under section 7902 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 39 section 410.

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(c) Additional functions; transportation barriers and housing needs; transportation and housing plans and proposals.
(d) Investigations; hearings; orders; administrative procedure applicable; final orders.
(e) Appointment of Executive director; hearing examiners and other personnel; provisions applicable.
(f) Technical, administrative, or other assistance; appointment, compensation, and travel expenses of advisory and technical experts and consultants.
(g) Reports to Congress; final reports on transportation barriers and housing needs.
(h) Authorization of appropriations.
793. Employment under Federal contracts.
(a) Amount of contracts or subcontracts; provision for employment and advancement of qualified handicapped individuals; regulations.
(b) Administrative enforcement; complaints; investigations; departmental action.
(c) Waiver by President; national interest special circumstances for waiver of particular agreements.
794. Nondiscrimination under Federal grants.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8104; title 20 sections 107a, 107d–4; title 21 section 1173; title 22 section 2102; title 42 sections 303, 421, 422, 603, 1203, 1353, 1382d, 3024, 6005.

GENERAL PROVISIONS

§ 701. Congressional declaration of purpose.

The purpose of this chapter is to provide a statutory basis for the Rehabilitation Services Administration, and to authorize programs to—

(1) develop and implement comprehensive and continuing State plans for meeting the current and future needs for providing vocational rehabilitation services to handicapped individuals and to provide such services for the benefit of such individuals, serving first those with the most severe handicaps, so that they may prepare for and engage in gainful employment;

(2) evaluate the rehabilitation potential of handicapped individuals;

(3) conduct a study to develop methods of providing rehabilitation services to meet the current and future needs of handicapped individuals for whom a vocational goal is not possible or feasible so that they may improve their ability to live with greater independence and self-sufficiency;

(4) assist in the construction and improvement of rehabilitation facilities;

(5) develop new and innovative methods of applying the most advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and develop new and innovative methods of providing rehabilitation services to handicapped individuals through research, special projects, and demonstrations;

(6) initiate and expand services to groups of handicapped individuals (including those who are homebound or institutionalized) who have been underserved in the past;

(7) conduct various studies and experiments to focus on long neglected problem areas;

(8) promote and expand employment opportunities in the public and private sectors for handicapped individuals and to place such individuals in employment;

(9) establish client assistance pilot projects;

(10) provide assistance for the purpose of increasing the number of rehabilitation personnel and increasing their skills through training; and

(11) evaluate existing approaches to architectural and transportation barriers confronting handicapped individuals, develop new such approaches, enforce statutory and regulatory standards and requirements regarding barrier-free construction of public facilities and study and develop solutions to existing architectural and transportation barriers impeding handicapped individuals.

(Pub. L. 93–112, § 2, Sept. 26, 1973, 87 Stat. 357.)

SHORT TITLE OF 1974 AMENDMENT

Section 100 of Pub. L. 93–516, title I, Dec. 7, 1974, 88 Stat. 1617, provided that: "This title [amending sections 702, 706, 720 to 722, 732, 741, 750, 761, 762, 771, 772, 774 to 776, 783, 785, and 792 of this title and enacting provisions set out as a note under section 702 of this title] shall be known as the 'Rehabilitation Act Amendments of 1974'."

SHORT TITLE

Section 1 of Pub. L. 93–112 provided that Pub. L. 93–112, which enacted this chapter and repealed sections 31 to 41c and 42–1 to 42b of this title, may be cited as the "Rehabilitation Act of 1973".

WHITE HOUSE CONFERENCE ON HANDICAPPED INDIVIDUALS

Pub. L. 93–516, title III, §§ 300–306, Dec. 7, 1974, 88 Stat. 1631–1634, provided that:

"SEC. 300. This title may be cited as the 'White House Conference on Handicapped Individuals Act'.

"SEC. 301. The Congress finds that—

"(1) the United States has achieved great and satisfying success in making possible a better quality of life for a large and increasing percentage of our population;

"(2) the benefits and fundamental rights of this society are often denied those individuals with mental and physical handicaps;

"(3) there are seven million children and at least twenty-eight million adults with mental or physical handicaps;

"(4) it is of critical importance to this Nation that equality of opportunity, equal access to all aspects of society and equal rights guaranteed by the Constitution of the United States be provided to all individuals with handicaps;

"(5) the primary responsibility for meeting the challenge and problems of individuals with handicaps has often fallen on the individual or his family;

"(6) it is essential that recommendations be made to assure that all individuals with handicaps are able to live their lives independently and with dignity, and that the complete integration of all individuals with handicaps into normal community living, working, and service patterns be held as the final objective; and

"(7) all levels of Government must necessarily share responsibility for developing opportunities for individuals with handicaps;

and it is therefore the policy of the Congress that the Federal Government work jointly with the States and their citizens to develop recommendations and plans for action in solving the multifold problems facing individuals with handicaps.

"SEC. 302. (a) The President is authorized to call a White House Conference on Handicapped Individuals not later than two years after the date of enactment of this title [Dec. 7, 1974] in order to develop recommendations and stimulate a national assessment of problems, and solutions to such problems, facing individuals with handicaps. Such a conference shall be planned and conducted under the direction of the National Planning and Advisory Council, established pursuant to subsection (b) of this section, and the Secretary of Health, Education, and Welfare (hereinafter referred to as the 'Secretary') and each Federal department and agency shall provide such cooperation and assistance to the Council, including the assignment of personnel, as may reasonably be required by the Secretary.

"(b)(1) There is established a National Planning Advisory Council (in this title referred to as the 'Council'), appointed by the Secretary, composed of twenty-eight members of whom not less than ten shall be individuals with handicaps appointed to represent all individuals with handicaps, and five shall be parents of individuals with handicaps appointed to represent all such parents and individuals. The Council shall provide guidance and planning for the Conference.

"(2) Any member of the Council who is otherwise employed by the Federal Government shall serve without compensation in addition to that received in his regular employment.

"(3) Members of the Council, other than those referred to in paragraph (1), shall receive compensation at rates not to exceed the daily rate prescribed for GS–18 under section 5332, title 5, United States Code, for each day they are engaged in the performance of their duties (including traveltime); and, while so serving away from their homes or regular places of business, they shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703, title 5, United States Code, for persons in Government service employed intermittently.

"(4) Such Council shall cease to exist one-hundred and twenty days after the submission of the final report required by section 302(e) [subsec. (e) of this section].

"(c) For the purpose of ascertaining facts and making recommendations concerning the utilization of skills, experience, and energies, and the improvement of the

conditions of individuals with handicaps, the Conference shall bring together individuals with handicaps and members of their families and representatives of Federal, State, and local governments, professional experts, and members of the general public recognized by individuals with handicaps as being knowledgeable about problems affecting their lives.

"(d) Participants in the White House Conference, and in conferences and other activities leading up to the White House Conference at the local and State level are authorized to consider all matters related to the purposes of the Conference set forth in subsection (a), but shall give special consideration to recommendations for:

"(1) providing education, health, and diagnostic services for all children early in life so that handicapping conditions may be discovered and treated;

"(2) assuring that every individual with a handicap receives appropriately designed benefits of the educational system;

"(3) assuring that individuals with handicaps have available to them all special services and assistance which will enable them to live their lives as fully and independently as possible;

"(4) enabling individuals with handicaps to have access to usable communication services and devices at costs comparable to other members of the population;

"(5) assuring that individuals with handicaps will have maximum mobility to participate in all aspects of society, including access to all publicly-assisted transportation services and, when necessary, alternative means of transportation at comparable cost;

"(6) improving utilization and adaptation of modern engineering and other technology to ameliorate the impact of handicapping conditions on the lives of individuals and especially on their access to housing and other structures;

"(7) assuring individuals with handicaps of equal opportunity with others to engage in gainful employment;

"(8) enabling individuals with handicaps to have incomes sufficient for health and for participation in family and community life as self-respecting citizens;

"(9) increasing research relating to all aspects of handicapping conditions, stressing the elimination of causes of handicapping conditions and the amelioration of the effects of such conditions;

"(10) assuring close attention and assessment of all aspects of diagnosis and evaluation of individuals with handicaps;

"(11) assuring review and evaluation of all governmental programs in areas affecting individuals with handicaps, and a close examination of the public role in order to plan for the future;

"(12) resolving the special problems of veterans with handicaps;

"(13) resolving the problems of public awareness and attitudes that restrict individuals with handicaps from participating in society to their fullest extent;

"(14) resolving the special problems of individuals with handicaps who are homebound or institutionalized;

"(15) resolving the special problems of individuals with handicaps who have limited English-speaking ability;

"(16) alloting funds for basic vocational rehabilitation services under part B of title I of the Rehabilitation Act of 1973 [sections 730 to 732 of this title]; in a fair and equitable manner in consideration of the factors set forth in section 407(a) of such Act [section 787 of this title]; and

"(17) promoting other related matters for individuals with handicaps.

"(e) A final report of the White House Conference on Handicapped Individuals shall be submitted by the Council to the President not later than one hundred and twenty days following the date on which the conference is called, and the findings and recommendations included therein shall be immediately made available to the public. The Council and the Secretary shall, within ninety days after the submission of such final reports, transmit to the President and the Congress their recommendations for administrative action and legislation necessary to implement the recommendations contained in such report.

"SEC. 303. (a) In carrying out the provisions of this title, the Council and the Secretary shall—

"(1) request the cooperation and assistance of such other Federal departments and agencies as may be appropriate, including Federal advisory bodies having responsibilities in areas affecting individuals with handicaps;

"(2) render all reasonable assistance, including financial assistance, to the States in enabling them to organize and conduct conferences on handicapped individuals prior to the White House Conference on Handicapped Individuals;

"(3) prepare and make available necessary background materials for the use of delgates to the White House Conference on Handicapped Individuals;

"(4) prepare and distribute such interim reports of the White House Conference on Handicapped Individuals as may be appropriate; and

"(5) engage such individuals with handicaps and additional personnel as may be necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service, and without regard to chapter 57 [51] and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates of pay not to exceed the rate prescribed for GS–18 under section 5332 of such title.

"(b) In carrying out the provisions of this title, the Secretary shall employ individuals with handicaps.

"SEC. 304. For the purpose of this title, the term 'State' includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"SEC. 305. (a) From the sums appropriated pursuant to section 306 the Secretary is authorized to make a grant to each State, upon application of the chief executive thereof, in order to assist in meeting the costs of that State's participation in the Conference program, including the conduct of at least one conference within each such State.

"(b) Grants made pursuant to subsection (a) shall be made only with the approval of the Council.

"(c) Funds appropriated for the purposes of this subsection shall be apportioned among the States by the Secretary in accordance with their respective needs for assistance undr this subsection, except that no State shall be apportioned more than $25,000 nor less than $10,000.

"SEC. 306. There are authorized to be appropriated, without fiscal year limitations, $2,000,000 to carry out the provisions of this title and such additional sums as may be necessary to carry out section 305. Sums so appropriated shall remain available for expenditure until June 30, 1977."

EX. ORD. NO. 11758. DELEGATION OF AUTHORITY OF THE PRESIDENT

Ex. Ord. No. 11758, Jan. 15, 1974, 39 F.R. 2075, as amended by Ex. Ord. No. 11867, June 19, 1975, 40 F.R. 26253, provided:

By virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The Director of the Office of Management and Budget is hereby designated and empowered to exercise, without approval, ratification, or other action of the President, the authority of the President under section 500(a) of the Rehabilitation Act of 1973 (87 Stat. 390, 29 U.S.C. 790) [section 790(a) of this title] with respect to the transfer of unexpended appropriations.

SEC. 2. The Secretary of Labor is hereby designated and empowered to exercise, without approval, ratification, or other action of the President, the authority of the President (1) under section 503(a) of the Rehabilitation Act of 1973 [section 793(a) of this title] to prescribe regulations, after consultation with the Secretary of Defense and the Administrator of General Services, with respect to the employment of qualified handicapped individuals under Federal procurement contracts, and (2) under section

503(c) of that act [section 793c of this title] with respect to prescribing, by regulation, guidelines for waiving the requirements of section 503 of the act [section 793 of this title]. Changes in any regulations prescribed by the Secretary pursuant to the preceding sentence shall be made only after consultation with the Secretary of Defense and the Administrator of General Services.

SEC. 3. The head of a Federal agency may, in conformity with the provisions of section 503(c) of the Rehabilitation Act of 1973 [section 793(c) of this title], and regulations issued by the Secretary of Labor pursuant to section 2 of this order, exempt any contract and, following consultation with the Secretary of Labor, any class of contracts, from the requirements of section 503 of the act [section 793 of this title].

SEC. 4. The Federal Procurement Regulations, the Armed Services Procurement Regulations, and, to the extent necessary, any supplemental or comparable regulation issued by any agency of the executive branch shall, following consultation with the Secretary of Labor, be amended to require, as a condition of entering into, renewing or extending any contract subject to the provisions of section 503 of the Rehabilitation Act of 1973 [section 793 of this title], inclusion of a provision requiring compliance with that section and regulations issued by the Secretary pursuant to section 2 of this order.

RICHARD NIXON.

§ 702. Rehabilitation Services Administration.

(a) Establishment; appointment of Commissioner; principal officer and principal agency.

There is established in the Office of the Secretary a Rehabilitation Services Administration which shall be headed by a Commissioner (hereinafter in this chapter referred to as the "Commissioner") appointed by the President by and with the advice and consent of the Senate. Except for subchapters IV and V of this chapter and as otherwise specifically provided in this chapter, such Administration shall be the principal agency, and the Commissioner shall be the principal officer, of such Department for carrying out this chapter. In the performance of his functions, the Commissioner shall be directly responsible to the Secretary or to the Under Secretary or an appropriate Assistant Secretary of such Department, as designated by the Secretary. The functions of the Commissioner shall not be delegated to any officer not directly responsible, both with respect to program operation and administration, to the Commissioner.

(b) Research; coordination and consultation.

The Secretary, through the Commissioner in coordination with other appropriate programs in the Department of Health, Education, and Welfare, in carrying out research under this chapter shall establish the expertise and technological competence to, and shall, in consultation with, the National Science Foundation and the National Academy of Sciences develop and support, and stimulate the development and utilization (including production and distribution of new and existing devices) of, innovative methods of applying advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems, and be responsible for carrying out the activities described in section 762(b)(2) of this title.

(c) Expenditure of funds only for programs, personnel, and administration of programs carried out under this chapter.

The Secretary shall take whatever action is necessary to insure that funds appropriated pursuant to this chapter, as well as unexpended appropriations for carrying out the Vocational Rehabilitation Act, are expended only for the programs, personnel, and administration of programs carried out under this chapter. (Pub. L. 93–112, § 3, Sept. 26, 1973, 87 Stat. 357, amended Pub. L. 93–516, title I, § 101(a), Dec. 7, 1974, 88 Stat. 1617.)

REFERENCES IN TEXT

Vocational Rehabilitation Act, referred to in subsec. (c), refers to act June 2, 1920, ch. 219, 41 Stat. 735, as amended, which was classified to chapter 4 (sections 31 to 41c and 42–1 to 42b) of this title, was repealed by section 500(a) of Pub. L. 93–112, effective 90 days after Sept. 26, 1973, and is now covered by this chapter. See section 790 of this title.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516 substantially reenacted existing provisions, and in subsec. (a) as so reenacted, substituted reference to Office of the Secretary for reference to the Department of Health, Education, and Welfare, added requirement that the appointment of Commissioner be approved by the Senate, added provisions that the Commissioner shall be the principal officer of the Department for carrying out provisions of this chapter, that the Commissioner shall be directly responsible to the Secretary, Under Secretary, or Assistant Secretary, as the case may be, and that the functions of the Commissioner shall not be delegated to any officer not directly responsible to the Commissioner both with respect to program operation and administration, and struck out provisions relating to the procedure for delegation of functions of the Commissioner to other officers.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 101(b) of Pub. L. 93–516 provided that: "The amendment made by subsection (a) of this section [amending subsec. (a) of this section] shall be effective sixty days after the date of enactment of this Act [Dec. 7, 1974]."

ADDITIONAL PERSONNEL FOR OFFICE FOR THE BLIND AND VISUALLY HANDICAPPED

Section 208(a) of Pub. L. 93–516 provided that: "The Secretary of Health, Education, and Welfare is directed to assign to the Office for the Blind and Visually Handicapped of the Rehabilitation Services Administration of the Department of Health, Education, and Welfare ten additional full-time personnel (or their equivalent), five of whom shall be supportive personnel, to carry out duties related to the administration of the Randolph-Sheppard Act [section 107 et seq. of Title 20, Education]."

PREFERENCE TO BLIND IN SELECTING PERSONNEL

Section 208(c) of Pub. L. 93–516 provided that: "In selecting personnel to fill any position under this section [authorizing assignment of 11 additional full-time personnel to the Office for the Blind and Visually Handicapped of the Rehabilitation Service Administration of the Department of Health, Education, and Welfare under subsecs. (a) and (b) of Pub. L. 93–516], the Secretary of Health, Education, and Welfare shall give preference to blind individuals."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 706 of this title; title 38 section 1904.

§ 703. Advance funding.

(a) For the purpose of affording adequate notice of funding available under this chapter, appropriations under this chapter are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(b) In order to effect a transition to the advance funding method of timing appropriation action, the authority provided by subsection (a) of this section shall apply notwithstanding that its initial applica-

tion will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year. (Pub. L. 93–112, § 4, Sept. 26, 1973, 87 Stat. 358.)

§ 704. Joint funding.

Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this chapter, where funds are provided for a single project by more than one Federal agency to an agency or organization assisted under this chapter, the Federal agency principally involved may be designated to act for all in administering the funds provided, and, in such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each agency. When the principal agency involved is the Rehabilitation Services Administration, it may waive any grant or contract requirement (as defined by such regulations) under or pursuant to any law other than this chapter, which requirement is inconsistent with the similar requirements of the administering agency under or pursuant to this chapter. (Pub. L. 93–112, § 5, Sept. 26, 1973, 87 Stat. 359.)

DELEGATION OF FUNCTIONS

Functions of the President to issue regulations relating to joint funding under this section delegated to the Administrator of General Services, see Ex. Ord. No. 11784, May 30, 1974, 39 F.R. 19443, set out as a note under section 301 of Title 3, The President.

DELEGATION OF AUTHORITY TO ISSUE JOINT FUNDING REGULATIONS

Authority of the President under this section delegated to the Administrator of General Services, see section 3 of Ex. Ord. No. 11867, June 19, 1975, 40 F.R. 26253, set out as a note under section 4252 of Title 42, The Public Health and Welfare, and policy functions transferred to Director of Office of Management and Budget by section 1 of Ex. Ord. No. 11893, Dec. 31, 1975, 41 F.R. 1040, set out as a note under section 4252 of title 42, The Public Health and Welfare.

§ 705. Consolidated rehabilitation plan.

(a) Election by State; agency concurrence.

In order to secure increased flexibility to respond to the varying needs and local conditions within the State, and in order to permit more effective and interrelated planning and operation of its rehabilitation programs, the State may submit a consolidated rehabilitation plan which includes the State's plan under section 721(a) of this title and its program for persons with developmental disabilities under the Developmental Disabilities Services and Facilities Construction Amendments of 1970: *Provided*, That the agency administering such State's program under such Act concurs in the submission of such a consolidated rehabilitation plan.

(b) Approval by Secretary of consolidated rehabilitation plan meeting statutory requirements; submission by State of separate rehabilitation plans.

Such a consolidated rehabilitation plan must comply with, and be administered in accordance with, all the requirements of this chapter and the Developmental Disabilities Services and Facilities Construction Amendments of 1970. If the Secretary finds that all such requirements are satisfied, he may approve the plan to serve in all respects as the substitute for the separate plans which would otherwise be required with respect to each of the programs included therein, or he may advise the State to submit separate plans for such programs.

(c) Noncompliance; assistance termination procedures.

Findings of noncompliance in the administration of an approved consolidated rehabilitation plan, and any reductions, suspensions, or terminations of assistance as a result thereof, shall be carried out in accordance with the procedures set forth in subsections (c) and (d) of section 721 of this title. (Pub. L. 93–112, § 6, Sept. 26, 1973, 87 Stat. 359.)

REFERENCES IN TEXT

For classification in the Code of the Developmental Disabilities Services and Facilities Construction Amendments of 1970, referred to in subsecs. (a) and (b), see Short Title note set out under section 2670 of Title 42, The Public Health and Welfare.

§ 706. Definitions.

For the purposes of this chapter:

(1) The term "construction" means the construction of new buildings, the acquisition, expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of such buildings, and the term "cost of construction" includes architects' fees and acquisition of land in connection with construction but does not include the cost of offsite improvements.

(2) The term "criminal act" means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, intoxication or otherwise the person engaging in the act, omission, or possession was legally incapable of committing a cirme.

(3) The term "establishment of a rehabilitation facility" means the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to rehabilitation facility purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may determine, in accordance with regulations he shall prescribe, in order to prevent inpairment of the objectives of, or duplication of, other Federal laws providing Federal assistance in the construction of such facilities), and the initial equipment for such buildings, and may include the initial staffing thereof.

(4) The term "evaluation of rehabilitation potential" means, as appropriate in each case:

(A) a preliminary diagnostic study to determine that the individual has a substantial handicap to employment, and that vocational rehabilitation services are needed;

(B) a diagnostic study consisting of a comprehensive evaluation of pertinent medical, psychological, vocational, educational, cultural, social, and environmental factors which bear on the individual's handicap to employment and rehabilitation potential including, to the degree needed, an evaluation of the individual's personality, intelligence level, educational achievements, work experience, vocational aptitudes and interests, personal and social adjustments, employment opportunities, and

other pertinent data helpful in determining the nature and scope of services needed;

(C) an appraisal of the individual's patterns of work behavior and ability to acquire occupational skill, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance, including the utilization of work, simulated or real, to assess and develop the individual's capacities to perform adequately in a work environment;

(D) any other goods or services provided for the purpose of ascertaining the nature of the handicap and whether it may reasonably be expected that the individual can benefit from vocational rehabilitation services;

(E) referral;

(F) the administration of these evaluation services; and

(G) (i) the provision of vocational rehabilitation services to any individual for a total period not in excess of eighteen months for the purpose of determining whether such individual is a handicapped individual, a handicapped individual for whom a vocational goal is not possible or feasible (as determined in accordance with section 702(c) of this title), or neither such individual; and (ii) an assessment, at least once in every ninety-day period during which such services are provided, of the results of the provision of such services to an individual to ascertain whether any of the determinations described in subclause (i) may be made.

(5) The term "Federal share" means 80 per centum, except that it shall mean 90 per centum for the purposes of part C of subchapter I of this chapter and as specifically set forth in section 771 (b) (3) of this title: *Provided*, That with respect to payments pursuant to part B of subchapter I of this chapter to any State which are used to meet the costs of construction of those rehabilitation facilities identified in section 723(b)(2) of this title in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 771(b)(3) of this title applicable with respect to that State and that, for the purpose of determining the non-Federal share with respect to any State, expenditures by a political subdivision thereof or by a local agency shall, subject to such limitations and conditions as the Secretary shall by regulation prescribe, be regarded as expenditures by such State.

(6) The term "handicapped individual" means any individual who (A) has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment and (B) can reasonably be expected to benefit in terms of employability from vocational rehabilitation services provided pursuant to subchapters I and III of this chapter. For the purposes of subchapters IV and V of this chapter, such term means any person who (A) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (B) has a record of such an impairment, or (C) is regarded as having such an impairment.

(7) The term "local agency" means an agency of a unit of general local government or of an Indian tribal organization (or combination of such units or organizations) which has an agreement with the State agency designated pursuant to section 721(a)(1) of this title to conduct a vocational rehabilitation program under the supervision of such State agency in accordance with the State plan approved under section 721 of this title. Nothing in the preceding sentence of this paragraph or in section 721 of this title shall be construed to prevent the local agency from utilizing another local public or nonprofit agency to provide vocational rehabilitation services: *Provided*, That such an arrangement is made part of the agreement specified in this paragraph.

(8) The term "nonprofit", when used with respect to a rehabilitation facility, means a rehabilitation facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of Title 26.

(9) The term "public safety officer" means a person serving the United States or a State or unit of general local government, with or without compensation, in any activity pertaining to—

(A) the enforcement of the criminal laws, including highway patrol, or the maintenance of civil peace by the National Guard or the Armed Forces,

(B) a correctional program, facility, or institution where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees,

(C) a court having criminal or juvenile delinquent jurisdiction where the activity is potentially dangerous because of contact with criminal suspects, defendants, prisoners, probationers, or parolees, or

(D) firefighting, fire prevention, or emergency rescue missions.

(10) The term "rehabilitation facility" means a facility which is operated for the primary purpose of providing vocational rehabilitation services to handicapped individuals, and which provides singly or in combination one or more of the following services for handicapped individuals: (A) vocational rehabilitation services which shall include, under one management, medical, psychological, social, and vocational services, (B) testing, fitting, or training in the use of prosthetic and orthotic devices, (C) prevocational conditioning or recreational therapy, (D) physical and occupational therapy, (E) speech and hearing therapy, (F) psychological and social services, (G) evaluation of rehabilitation potential, (H) personal and work adjustment, (I) vocational training with a view toward career advancement (in combination with other rehabilitation services), (J) evaluation or control of specific disabilities, (K) orientation and mobility services to the blind, and (L) extended employment for those handicapped individuals who cannot be readily absorbed in the competitive labor market, except that all medical and related health services must be prescribed by, or under the formal supervision of, persons licensed to prescribe or supervise the provision of such services in the State.

(11) The term "Secretary", except when the context otherwise requires, means the Secretary of Health, Education, and Welfare.

(12) The term "severe handicap" means the disability which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, renal failure, respiratory or pulmonary dysfunction, and any other disability specified by the Secretary in regulations he shall prescribe.

(13) The term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands, and for the purposes of American Samoa and the Trust Territory of the Pacific Islands, the appropriate State agency designated as provided in section 721(a)(1) of this title shall be the Governor of American Samoa or the High Commissioner of the Trust Territory of the Pacific Islands, as the case may be.

(14) The term "vocational rehabilitation services" means those services identified in section 723 of this title which are provided to handicapped individuals under this chapter. (Pub. L. 93–112, § 7, Sept. 26, 1973, 87 Stat. 359, amended Pub. L. 93–516, title I, § 111(a), Dec. 7, 1974, 88 Stat. 1619.)

AMENDMENTS

1974—Par. (6). Pub. L. 93–516 expanded the definition of handicapped individual to include for the purposes of subchapters IV and V of this chapter any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such as impairment, or is regarded as having such an impairment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 793, 794 of this title.

§ 707. Allotment percentage.

(a) Percentage limitation; promulgation and computation; "United States" defined.

(1) The allotment percentage for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (A) the allotment percentage shall in no case be more than 75 per centum or less than 33⅓ per centum, and (B) the allotment percentage for the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands shall be 75 per centum.

(2) The allotment percentages shall be promulgated by the Secretary between July 1 and September 30 of each even-numbered year, on the basis of the average of the per capita incomes of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning on the July 1 next succeeding such promulgation.

(3) The term "United States" means (but only for purposes of this subsection) the fifty States and the District of Columbia.

(b) Population determination.

The population of the several States and of the United States shall be determined on the basis of the most recent data available, to be furnished by the Department of Commerce by October 1 of the year preceding the fiscal year for which funds are appropriated pursuant to statutory authorizations. (Pub. L. 93–112, § 8, Sept. 26, 1973, 87 Stat. 362.)

§ 708. Audit and examination of records; scope of disclosure; access to representatives.

Each recipient of a grant or contract under this chapter shall keep such records as the Secretary may prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the project or undertaking in connection with which such grant or contract is made or funds thereunder used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of any grant or contract under this chapter which are pertinent to such grant or contract. (Pub. L. 93–112, § 9, Sept. 26, 1973, 87 Stat. 362.)

§ 709. Nonduplication prohibition.

In determining the amount of any State's Federal share of expenditures for planning, administration, and services incurred by it under a State plan approved in accordance with section 721 of this title, there shall be disregarded (1) any portion of such expenditures which are financed by Federal funds provided under any other provision of law, and (2) the amount of any non-Federal funds required to be expended as a condition of receipt of such Federal funds. No payment may be made from funds provided under one provision of this chapter relating to any cost with respect to which any payment is made under any other provision of this chapter. (Pub. L. 93–112, § 10, Sept. 26, 1973, 87 Stat. 363.)

SUBCHAPTER I.—VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 706, 780, 783, 784 of this title.

PART A.—GENERAL PROVISIONS

§ 720. Federal grants.

(a) Congressional declaration of purpose.

The purpose of this subchapter is to authorize grants to assist States to meet the current and future needs of handicapped individuals, so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities.

(b) Authorization of appropriations.

(1) For the purpose of making grants to States under part B of this subchapter to assist them in meeting costs of vocational rehabilitation services provided in accordance with State plans under section 721 of this title, there is authorized to be appropriated $650,000,000 for the fiscal year ending June 30, 1974, $680,000,000 for the fiscal year ending June 30, 1975, and $720,000,000 for the fiscal year ending June 30, 1976.

(2) For the purpose of carrying out part C of this subchapter (relating to grants to States and public and nonprofit agencies to assist them in meeting the cost of projects to initiate or expand services to handicapped individuals, especially those with the most severe handicaps) and part D of this subchapter (relating to the study of comprehensive service needs of individuals with the most severe handicaps), there is authorized to be appropriated $37,000,000 for the fiscal year ending June 30, 1974, $39,000,000 for the fiscal year ending June 30, 1975, and $42,000,000 for the fiscal year ending June 30, 1976; and there is further authorized to be appropriated for such purposes for each such year such additional sums as the Congress may determine to be necessary. Of the sums appropriated under this paragraph for each such fiscal year, $1,000,000 in each such year shall be available only for the purpose of carrying out Part D of this subchapter. (Pub. L. 93–112, title I, § 100, Sept. 26, 1973, 87 Stat. 363, amended Pub. L. 93–516, title I, § 102(a), Dec. 7, 1974, 88 Stat. 1618.)

AMENDMENTS

1974—Subsec. (b)(1). Pub. L. 93–516, § 102(a)(1), added provisions authorizing appropriation of $720,000,000 for fiscal year ending June 30, 1976.

Subsec. (b)(2). Pub. L. 93–516 § 102(a)(2), added provisions authorizing appropriation of $42,000,000 for fiscal year ending June 30, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 730, 740 of this title.

§ 721. State plans.

(a) Annual State plans; general and specific requirements.

For each fiscal year in which a State desires to participate in programs under this subchapter, a State shall submit to the Secretary for his approval an annual plan for vocational rehabilitation services which shall—

(1) State agency for plan administration, designation; separate agencies for services to the blind and for other services; joint program; political subdivision participation, waiver; qualification of State agency.

(A) designate a State agency as the sole State agency to administer the plan, or to supervise its administration by a local agency, except that (i) where under the State's law the State agency for the blind or other agency which provides assistance or services to the adult blind, is authorized to provide vocational rehabilitation services to such individuals, such agency may be designated as the sole State agency to administer the part of the plan under which vocational rehabilitation services are provided for the blind (or to supervise the administration of such part by a local agency) and a separate State agency may be designated as the sole State agency with respect to the rest of the State plan, and (ii) the Secretary, upon the request of a State, may authorize such agency to share funding and administrative responsibility with another agency of the State or with a local agency in order to permit such agencies to carry out a joint program to provide services to handicapped individuals, and may waive compliance with respect to vocational rehabilitation services furnished under such programs with the requirement of clause (4) of this subsection that the plan be in effect in all political subdivisions of that State;

(B) provide that the State agency so designated to administer or supervise the administration of the State plan, or (if there are two State agencies designated under subclause (A) of this clause) to supervise or administer the part of the State plan that does not relate to services for the blind, shall be (i) a State agency primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, (ii) the State agency administering or supervising the administration of education or vocational education in the State, or (iii) a State agency which includes at least two other major organizational units each of which administers one or more of the major public education, public health, public welfare, or labor programs of the State;

(2) State rehabilitation bureau; director; staff; major organizational status; separate units for services to the blind and for other services.

provide, except in the case of agencies described in clause (1)(B)(i)—

(A) that the State agency designated pursuant to paragraph (1) (or each State agency if two are so designated) shall include a vocational rehabilitation bureau, division, or other oganizational unit which (i) is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of handicapped individuals, and is responsible for the vocational rehabilitation program of such State agency, (ii) has a full-time director, and (iii) has a staff employed on such rehabilitation work of such organizational unit all or substantially all of whom are employed full time on such work; and

(B)(i) that such unit shall be located at an organizational level and shall have an organizational status within such State agency comparable to that of other major organizational units of such agency, or (ii) in the case of an agency described in clause (1)(B)(ii), either that such unit shall be so located and have such status, or that the director of such unit shall be the executive officer of such State agency; except that, in the case of a State which has designated only one State agency pursuant to clause (1) of this subsection, such State may, if it so desires, assign responsibility for the part of the plan under which vocational rehabilitation services are provided for the blind to one organizational unit of such agency, and assign

responsibility for the rest of the plan to another organizational unit of such agency, with the provisions of this clause applying separately to each of such units;

(3) State financial participation.
provide for financial participation by the State, or if the State so elects, by the State and local agencies to meet the amount of the non-Federal share;

(4) Political subdivision participation, waiver; regulations; funds of local agency for non-Federal share of cost of services.
provide that the plan shall be in effect in all political subdivisions, except that in the case of any activity which, in the judgment of the Secretary, is likely to assist in promoting the vocational rehabilitation of substantially larger numbers of handicapped individuals or groups of handicapped individuals the Secretary may waive compliance with the requirement herein that the plan be in effect in all political subdivisions of the State to the extent and for such period as may be provided in accordance with regulations prescribed by him, but only if the non-Federal share of the cost of such vocational rehabilitation services is met from funds made available by a local agency (including, to the extent permitted by such regulations, funds, contributed to such agency by a private agency, organization, or individual);

(5) Plans, policies, and methods for execution, administration, and supervision of State plan; expansion and improvement of services; priorities in order of selection; achievement of outcome and service goals.
(A) contain the plans, policies, and methods to be followed in carrying out the State plan and in its administration and supervision, including a description of the method to be used to expand and improve services to handicapped individuals with the most severe handicaps; and, in the event that vocational rehabilitation services cannot be provided to all eligible handicapped individuals who apply for such services, show (i) the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided, and (ii) the outcomes and service goals, and the time within which they may be achieved, for the rehabilitation of such individuals, which order of selection for the provision of vocational rehabilitation services shall be determined on the basis of serving first those individuals with the most severe handicaps and shall be consistent with priorities in such order of selection so determined, and outcome and service goals for serving handicapped individuals, established in regulations prescribed by the Secretary; and
(B) provide satisfactory assurance to the Secretary that the State has studied and considered a broad variety of means for providing services to individuals with the most severe handicaps;

(6) Methods of administration; state employment requirement.
provide for such methods of administration, other than methods relating to the establishment and maintenance of personnel standards, as are found by the Secretary to be necessary for the proper and efficient administration of the plan (including a requirement that the State agency and facilities in receipt of assistance under this subchapter shall take affirmative action to employ and advance in employment qualified handicapped individuals covered under, and on the same terms and conditions as set forth in, section 793 of this title);

(7) Personnel standards; State licensure laws and regulations; minimum standards for facilities and personnel utilized in providing rehabilitation services.
contain (A) provisions relating to the establishment and maintenance of personnel standards, which are consistent with any State licensure laws and regulations, including provisions relating to the tenure, selection, appointment, and qualifications of personnel, and (B) provisions relating to the establishment and maintenance of minimum standards governing the facilities and personnel utilized in the provision of vocational rehabilitation services, but the Secretary shall exercise no authority with respect to the selection, method of selection, tenure of office, or compensation of any individual employed in accordance with such provision;

(8) Consideration of eligibility for similar benefits under any other program.
provide, at a minimum, for the provision of the vocational rehabilitation services specified in clauses (1) through (3) of subsection (a) of section 723 of this title, and the remainder of such services specified in such section after full consideration of eligibility for similar benefits under any other program, except that, in the case of the vocational rehabilitation services specified in clauses (4) and (5) of subsection (a) of such section, such consideration shall not be required where it would delay the provision of such services to any individual;

(9) Individualized written rehabilitation program.
provide that (A) an individualized written rehabilitation program meeting the requirements of section 722 of this title will be developed for each handicapped individual eligible for vocational rehabilitation services under this chapter, (B) such services will be provided under the plan in accordance with such program, and (C) records of the characteristics of each applicant will be kept specifying, as to those individuals who apply for services under this subchapter and are determined not to be eligible therefor, the reasons for such determinations in such detail as required by the Secretary in order for him to analyze and evaluate annually the reasons for and numbers of such ineligibility determinations as part of his responsibilities under section 781 of this title, and that the State agency will at least annually categorize and analyze such reasons and numbers and report this information to the Secretary and will, not later than 12 months after each such determination, review each such ineligibility determination in accordance with the criteria set forth in section 722 of this title;

(10) Reports of State agency; form; scope of information; time of report; correctness and verification.
provide that the State agency will make such reports in such form, containing such information (including the data described in subclause (C) of clause (9) of this subsection, periodic estimates of the population of handicapped individuals eligible for services under this chapter in such State, specifications of the number of such individuals who will be served with funds provided under this chapter and the outcomes and service goals to be achieved for such individuals in each priority category specified in accordance with clause (5) of this subsection, and the service costs for each such category), and at such time as the Secretary may require to carry out his functions under this subchapter, and comply with such provisions as he may find necessary to assure the correctness and verification of such reports;

(11) Intergovernmental cooperation.
provide for entering into cooperative arrangements with, and the utilization of the services and facilities of, the State agencies administering the State's public assistance programs, other programs for handicapped individuals, veterans programs, manpower programs, and public employment offices, and the Social Security Administration of the Department of Health, Education, and Welfare, the Veterans' Administration, and other Federal, State, and local public agencies providing services related to the rehabilitation of handicapped individuals;

(12) Community resources; utilization.
provide satisfactory assurances to the Secretary that, in the provision of vocational rehabilitation services, maximum utilization shall be made of public or other vocational or technical training facilities or other appropriate resources in the community;

(13) Disabled Federal employees; disabled public safety officers.
(A) provide that vocational rehabilitation services provided under the State plan shall be available to any civil employee of the United States disabled while in the performance of his duty on the same terms and conditions as apply to other persons, and

(B) provide that special consideration will be given to the rehabilitation under this chapter of a handicapped individual whose handicapping condition arises from a disability sustained in the line of duty while such individual was performing as a public safety officer and the proximate cause of such disability was a criminal act, apparent criminal act, or a hazardous condition resulting directly from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities;

(14) Residency requirement; prohibition.
provide that no residence requirement will be imposed which excludes from services under the plan any individual who is present in the State;

(15) Continuing studies.
provide for continuing statewide studies of the needs of handicapped individuals and how these needs may be most effectively met (including the State's needs for rehabilitation facilities and review of the efficacy of the criteria employed with respect to ineligibility determinations described in subclause (C) of clause (9) of this subsection) with a view toward the relative need for services to significant segments of the population of handicapped individuals and the need for expansion of services to those individuals with the most severe handicaps;

(16) Employment review and reevaluation.
provide for (A) periodic review and reevaluation of the status of handicapped individuals placed in extended employment in rehabilitation facilities (including workshops) to determine the feasibility of their employment, or training for employment, in the competitive labor market, and (B) maximum efforts to place such individuals in such employment or training whenever it is determined to be feasible;

(17) State facilities, construction; Federal share of construction costs; general grant and contract requirements applicable; nonreduction of other rehabilitation services.
provide that where such State plan includes provisions for the construction of rehabilitation facilities—

(A) the Federal share of the cost of construction thereof for a fiscal year will not exceed an amount equal to 10 per centum of the State's allotment for such year,

(B) the provisions of section 776 of this title shall be applicable to such construction and such provisions shall be deemed to apply to such construction, and

(C) there shall be compliance with regulations the Secretary shall prescribe designed to assure that no State will reduce its efforts in providing other vocational rehabilitation services (other than for the establishment of rehabilitation facilities) because its plan includes such provisions for construction;

(18) Policy planning; trainee participation.
provide satisfactory assurances to the Secretary that the State agency designated pursuant to clause (1) (or each State agency if two are so designated) and any sole local agency administering the plan in a political subdivision of the State will take into account, in connection with matters of general policy arising in the administration of the plan, the views of individuals and groups thereof who are recipients of vocational rehabilitation services (or, in appropriate cases, their parents or guardians), working in the field of vocational rehabilitation, and providers of vocational rehabilitation services; and

(19) Amendments; continuing studies and annual evaluation as basis.
provide satisfactory assurances to the Secretary that the continuing studies required under clause (15) of this subsection, as well as an annual evalu-

ation of the effectiveness of the program in meeting the goals and priorities set forth in the plan, will form the basis for the submission, from time to time as the Secretary may require, of appropriate amendments to the plan.

(b) Approval or disapproval by Secretary; notice and hearing.

The Secretary shall approve any plan which he finds fulfills the conditions specified in subsection (a) of this section, and he shall disapprove any plan which does not fulfill such conditions. Prior to such disapproval, the Secretary shall notify a State of his intention to disapprove its plan, and he shall afford such State reasonable notice and opportunity for hearing.

(c) Noncompliance; payment limitation.

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this section, finds that—

(1) the plan has been so changed that it no longer complies with the requirements of subsection (a) of this section; or

(2) in the administration of the plan there is a failure to comply substantially with any provision of such plan,

the Secretary shall notify such State agency that no further payments will be made to the State under this subchapter (or, in his discretion, that such further payments will be reduced, in accordance with regulations the Secretary shall prescribe, or that further payments will not be made to the State only for the projects under the parts of the State plan affected by such failure), until he is satisfied there is no longer any such failure. Until he is so satisfied, the Secretary shall make no further payments to such State under this subchapter (or shall limit payments to projects under those parts of the State plan in which there is no such failure).

(d) Judicial review; venue; record; agency action provisions applicable.

If any State is dissatisfied with the Secretary's action under subsection (b) or (c) of this section, such State may appeal to the United States district court for the district where the capital of such State is located and judicial review of such action shall be on the record in accordance with the provisions of chapter 7 of Title 5. (Pub. L. 93–112, title I, § 101, Sept. 26, 1973, 87 Stat. 363, amended Pub. L. 93–516, title I, § 111(b)–(d), Dec. 7, 1974, 88 Stat. 1619, 1620.)

AMENDMENTS

1974—Subsec. (a)(6). Pub. L. 93–516, § 111(b), added parenthetical provisions relating to the requirement that the State take affirmative action to employ and advance in employment qualified handicapped individuals covered under, and on the same terms and conditions as set forth in section 793 of this title.

Subsec. (a)(9). Pub. L. 93–516, § 111(c), in par. (C), added provisions that the records be in such detail as required by the Secretary in order for him to analyze and evaluate annually the reasons for and numbers of such ineligibility determinations as part of his responsibilities under section 781 of this title, and that the state agency will at least annually categorize and analyze such reasons and numbers and report this information to the Secretary and will, not later than 12 months after each such determination, review each such ineligibility determination in accordance with the criteria set forth in section 722 of this title.

Subsec. (a)(15). Pub. L. 93–516, § 111(d), substituted "needs for rehabilitation facilities and review of the efficacy of the criteria employed with respect to ineligibility determinations described in subclause (C) of clause (9) of this subsection" for "needs for rehabilitation."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 705, 706, 709, 720, 722, 731, 732, 741, 762, 771, 772, 774, 776, 781, 786 of this title; title 20 section 107a; title 21 section 1173.

§ 722. Individualized written rehabilitation program.

(a) Joint development by counselor or coordinator and handicapped individual; goods and services for handicapped individual; terms and conditions, rights and remedies.

The Secretary shall insure that the individualized written rehabilitation program, or the specification of reasons for a determination of ineligibility prior to initiation of such program based on preliminary diagnosis, required by section 721(a)(9) of this title in the case of each handicapped individual is developed jointly by the vocational rehabilitation counselor or coordinator and the handicapped individual (or, in appropriate cases, his parents or guardians), and that such program meets the requirements set forth in subsection (b) of this section. Such written program shall set forth the terms and conditions, as well as the rights and remedies, under which goods and services will be provided to the individual, and, as appropriate, such specification of reasons for such an ineligibility determination shall set forth the rights and remedies, including recourse to the process set forth in subsection (b)(5) of this section, available to the individual in question.

(b) Annual review; joint redevelopment of terms; scope of program.

Each individualized written rehabilitation program shall be reviewed on an annual basis at which time each such individual (or, in appropriate cases, his parents or guardians) will be afforded an opportunity to review such program and jointly redevelop its terms. Such program shall include, but not be limited to (1) a statement of long-range rehabilitation goals for the individual and intermediate rehabilitation objectives related to the attainment of such goals, (2) a statement of the specific vocational rehabilitation services to be provided, (3) the projected date for the initiation and the anticipated duration of each such service, (4) objective criteria and evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and, (5) where appropriate, a detailed explanation of the availability of a client assistance project established in such area pursuant to section 732 of this title.

(c) Determination and achievement of vocational goal; decision respecting potential and capability of achievement; annual review of decision.

The Secretary shall also insure that (1) in making any determination of ineligibility referred to in subsection (a) of this section, or in developing and carrying out the individualized written rehabilitation program required by section 721 of this title in the case of each handicapped individual, emphasis is

placed upon the determination and achievement of a vocational goal for such individual, (2) a decision that such an individual is not capable of achieving such a goal and thus not eligible for vocational rehabilitation services provided with assistance under this part, is made only in full consultation with such individual (or, in appropriate cases, his parents or guardians), and only upon the certification, as an amendment to such written program, or as a part of the specification of reasons for an ineligibility determination, as appropriate, that the preliminary diagnosis or evaluation of rehabilitation potential, as appropriate, has demonstrated beyond any reasonable doubt that such individual is not then capable of achieving such a goal, and (3) any such decision, as an amendment to such written program, shall be reviewed at least annually in accordance with the procedure and criteria established in this section. (Pub. L. 93–112, title I, § 102, Sept. 26, 1973, 87 Stat. 368, amended Pub. L. 93–516, title I, 111(e), Dec. 7, 1974, 88 Stat. 1620.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516, § 111(e)(1), substituted "written rehabilitation program, or the specification of reasons for a determination of ineligibility prior to initiation of such program based on preliminary diagnosis," for "written rehabilitation program," and added provisions that the specifications of reasons for an ineligibility determination shall set forth the rights and remedies available to the individual in question, including recourse to the process set forth in subsec. (b)(5) of this section.

Subsec. (c)(1). Pub. L. 93–516, § 111(e)(2), substituted "in making any determination of ineligibility referred to in subsection (a) of this section, or in developing and carrying out the individualized written rehabilitation program required by section 721 of this title in the case of each handicapped individual," for "in developing and carrying out individualized written rehabilitation program required by section 721 of this title in the case of each handicapped individual primary".

Subsec. (c)(2). Pub. L. 93–516, § 111(e)(3), substituted "program, or as a part of the specification of reasons for an ineligibility determination, as appropriate, that the preliminary diagnosis or evaluation of rehabilitation potential, as appropriate," for "program, that the evaluation of rehabilitation potential".

Subsec. (c)(3). Pub. L. 93–516, § 111(e)(4), substituted "such decision, as an amendment to such written program," for "such decision".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 721 of this title.

§ 723. Scope of vocational rehabilitation services.

(a) Individual services.

Vocational rehabilitation services provided under this chapter are any goods or services necessary to render a handicapped individual employable, including, but not limited to, the following:

(1) evaluation of rehabilitation potential, including diagnostic and related services, incidental to the determination of eligibility for, and the nature and scope of, services to be provided, including, where appropriate, examination by a physician skilled in the diagnosis and treatment of emotional disorders, or by a licensed psychologist in accordance with State laws and regulations, or both;

(2) counseling, guidance, referral, and placement services for handicapped individuals, including followup, follow-along, and other post-employment services necessary to assist such individuals to maintain their employment and services designed to help handicapped individuals secure needed services from other agencies, where such services are not available under this chapter;

(3) vocational and other training services for handicapped individuals, which shall include personal and vocational adjustment, books, and other training materials, and services to the families of such individuals as are necessary to the adjustment or rehabilitation of such individuals: *Provided*, That no training services in institutions of higher education shall be paid for with funds under this subchapter unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for such training;

(4) physical and mental restoration services, including, but not limited to, (A) corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial handicap to employment, but is of such nature that such correction or modification may reasonably be expected to eliminate or substantially reduce the handicap within a reasonable length of time, (B) necessary hospitalization in connection with surgery or treatment, (C) prosthetic and orthotic devices, (D) eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select, (E) special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals suffering from end-stage renal disease, and (F) diagnosis and treatment for mental and emotional disorders by a physician or licensed psychologist in accordance with State licensure laws;

(5) maintenance, not exceeding the estimated cost of subsistence, during rehabilitation;

(6) interpreter services for deaf individuals, and reader services for those individuals determined to be blind after an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(7) recruitment and training services for handicapped individuals to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, and law enforcement, and other appropriate service employment;

(8) rehabilitation teaching services and orientation and mobility services for the blind;

(9) occupational licenses, tools, equipment, and initial stocks and supplies;

(10) transportation in connection with the rendering of any vocational rehabilitation service; and

(11) telecommunications, sensory, and other technological aids and devices.

(b) Group services.

Vocational rehabilitation services, when provided for the benefit of groups of individuals, may also include the following:

(1) in the case of any type of small business operated by individuals with the most severe handicaps the operation of which can be improved by management services and supervision provided by the State agency, the provision of such services and supervision, along or together with the acquisition by the State agency of vending facilities or other equipment and initial stocks and supplies; and

(2) the construction or establishment of public or nonprofit rehabilitation facilities and the provision of other facilities and services which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized rehabilitation written program of any one handicapped individual.

(Pub. L. 93–112, title I, § 103, Sept. 26, 1973, 87 Stat. 368.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 721 of this title.

§ 724. Non-Federal share for construction.

For the purpose of determining the amount of payments to States for carrying out part B of this subchapter, the non-Federal share, subject to such limitations and conditions as may be prescribed in regulations by the Secretary, shall include contributions of funds made by any private agency, organization, or individual to a State or local agency to assist in meeting the costs of construction or establishment of a public or nonprofit rehabilitation facility, which would be regarded as State or local funds except for the condition, imposed by the contributor, limiting use of such funds to construction or establishment of such facility. (Pub. L. 93–112, title I, § 104, Sept. 26, 1973, 87 Stat. 370.)

PART B.—BASIC VOCATIONAL REHABILITATION SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 706, 720, 724, 787 of this title.

§ 730. State allotments.

(a) Computation; minimum amount; adjustments.

For each fiscal year, each State shall be entitled to an allotment of an amount bearing the same ratio to the amount authorized to be appropriated under subsection (b)(1) of section 720 of this title for allotment under this section as the product of (1) the population of the State and (2) the square of its allotment percentage bears to the sum of the corresponding products for all the States. The allotment to any State (other than Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) under the first sentence of this subsection for any fiscal year which is less than one-quarter of 1 per centum of the amount appropriated under subsection (b)(1) of section 720 of this title, or $2,000,000, whichever is greater, shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotments to each of the remaining such States under the first sentence of this subsection, but with such adjustments as may be necessary to prevent the allotment of any such remaining States from being thereby reduced to less than that amount.

(b) Additional payments; authorization of additional appropriations.

If the payment to a State under section 731(a) of this title for a fiscal year is less than the total payments such State received under section 2 of the Vocational Rehabilitation Act for the fiscal year ending June 30, 1973, such State shall be entitled to an additional payment (subject to the same terms and conditions applicable to other payments under this part) equal to the difference between such payment under section 731(a) of this title and the amount so received by it. Payments attributable to the additional payment to a State under this subsection shall be made only from appropriations specifically made to carry out this subsection, and such additional appropriations are hereby authorized.

(c) Unused funds; redistribution; increase in amount.

Whenever the Secretary determines, after reasonable opportunity for the submission to him of comments by the State agency administering or supervising the program established under this subchapter that any payment of an allotment to a State under section 731(a) of this title for any fiscal year will not be utilized by such State in carrying out the purposes of this subchapter, he shall make such amount available for carrying out the purposes of this subchapter to one or more other States to the extent he determines such other State will be able to use such additional amount during such year for carrying out such purposes. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for the purposes of this part, be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year. (Pub. L. 93–112, title I, § 110, Sept. 26, 1973, 87 Stat. 370.)

REFERENCES IN TEXT

Section 2 of Vocational Rehabilitation Act, referred to in subsec. (b), refers to section 2 of act June 2, 1920, ch. 219, 41 Stat. 735, as amended, which provided for grants to States for vocational rehabilitation service services, including computation of allotments, amount of payments, adjusted Federal shares, and private contributions for construction or establishment of facilities, and which was classified to section 32 of this title, was repealed by section 500(a) of Pub. L. 93–112, effective 90 days after Sept. 26, 1973, and is now covered by this section, and sections 724 and 731 of this title. See section 790 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 731 of this title.

§ 731. Payments to States.

(a) Amount.

From each State's allotment under this part for any fiscal year (including any additional payment to it under section 730(b) of this title), the Secretary shall pay to such State an amount equal to the Federal share of the cost of vocational rehabilitation

services under the plan for such State approved under section 721 of this title, including expenditures for the administration of the State plan, except that the total of such payments to such State for such fiscal year may not exceed its allotment under subsection (a) (and its additional payment under subsection (b), if any) of section 730 of this title for such year and such payments shall not be made in an amount which would result in a violation of the provisions of the State plan required by clause (17) of section 721 (a) of this title and except that the amount otherwise payable to such State for such year under this section shall be reduced by the amount (if any) by which expenditures from non-Federal sources during such year under this subchapter are less than expenditures under the State plan for the fiscal year ending June 30, 1972, under the Vocational Rehabilitation Act.

(b) Method of computation and payment.

The method of computing and paying amounts pursuant to subsection (a) of this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each calendar quarter or other period prescribed by him, estimate the amount to be paid to each State under the provisions of such subsection for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation, as the Secretary may find necessary.

(2) The Secretary shall pay, from the allotment available therefor, the amount so estimated by him for such period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which he finds that his estimate of the amount to be paid the State for any prior period under such subsection was greater or less than the amount which should have been paid to the State for such prior period under such subsection. Such payment shall be made prior to audit or settlement by the General Accounting Office, shall be made through the disbursing facilities of the Treasury Department, and shall be in such installments as the Secretary may determine. (Pub. L. 93–112, title I, § 111, Sept. 26, 1973, 87 Stat. 371.)

REFERENCES IN TEXT

Vocational Rehabilitation Act, referred to in subsec. (a), refers to act June 2, 1920, ch. 219, 41 Stat. 735, as amended, which was classified to chapter 4 (sections 31 to 41c and 42–1 to 42b) of this title, was repealed by section 500(a) of Pub. L. 93–112, effective 90 days after Sept. 26, 1973, and is now covered by this chapter. See section 790 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 730 of this title; title 5 section 8104.

§ 732. Client assistance.

(a) Amount of assistance for regional pilot projects; duties of counselors.

From funds appropriated under section 774 of this title for special projects and demonstrations in excess of $11,860,000 the Secretary shall set aside up to $1,500,000, but no less than $500,000 for the fiscal year ending June 30, 1974, up to $2,500,000 but no less than $1,000,000 for the fiscal year ending June 30, 1975, and up to $2,500,000 but no less than $1,000,000 for the fiscal year ending June 30, 1976, to establish in no less than 7 nor more than 20 geographically dispersed regions client assistance pilot projects (hereinafter in this section referred to as "projects") to provide counselors to inform and advise all clients and client applicants in the project area of all available benefits under this chapter and, upon requests of such client or client applicant, to assist such clients or applicants in their relationships with projects, programs, and facilities providing services to them under this chapter. In the event that funds so appropriated under section 774 of this title do not exceed $11,860,000 in any fiscal year, the Secretary is authorized to utilize such funds to carry out this section.

(b) Regulations; requirements.

The Secretary shall prescribe regulations which shall include the following requirements:

(1) Employment or benefit duplication.

No employees of such projects shall be presently serving as staff or consultants or receiving benefits of any kind directly or indirectly from any rehabilitation project, program, or facility receiving assistance under this chapter in the project area.

(2) Access to policymaking and administrative personnel.

Each project shall be afforded reasonable access to policymaking and administrative personnel in State and local rehabilitation programs, projects, and facilities.

(3) Annual reports; summary of accomplishments; statistical tabulation of cases; submittal to Congressional committees.

The project shall submit an annual report, through the State agency designated pursuant to section 721 of this title, to the Secretary on the operation of the project during the previous year, including a summary of the work done and a uniform statistical tabulation of all cases handled by such project. A copy of each such report shall be submitted to the appropriate committees of the Congress by the Secretary, together with a summary of such reports and his evaluation of such projects, including appropriate recommendations.

(4) Graduate student services.

Each State agency may enter into cooperative arrangements with institutions of higher education to secure the services in such projects of graduate students who are undergoing clinical training activities in related fields. No compensation with funds appropriated under this chapter shall be provided to such students.

(5) Availability of adequate services; availment of such services without discouragement.

Reasonable assurance shall be given by the appropriate State agency that all clients or client applicants within the project area shall have the opportunity to receive adequate service under the project and shall not be pressured against or otherwise discouraged from availing themselves of the services available under such project.

(6) State agency for project funding, administration, and operation.

The project shall be funded, administered, and operated directly by and with the concurrence of the State agency designated pursuant to section 721 of this title. (Pub. L. 93–112, title I, § 112, Sept. 26, 1973, 87 Stat. 371, amended Pub. L. 93–516, title I, §§ 102 (b), 111(f), Dec. 7, 1974, 88 Stat. 1618, 1620.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516 substituted "in excess of $11,860,000" for "in excess of an amount equal to the amount obligated for expenditure for carrying out such projects and demonstrations from appropriations under the Vocational Rehabilitation Act in the fiscal year ending June 30, 1973,", authorized appropriation of up to $2,500,000 but no less than $1,000,000 for fiscal year ending June 30, 1976, and added provisions that in the event that funds so appropriated under section 774 of this title do not exceed $11,860,000 in any fiscal year, the Secretary is authorized to utilize such funds to carry out this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 722 of this title.

PART C.—INNOVATION AND EXPANSION GRANTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 706, 720 of this title.

§ 740. State allotments.

(a) Computation; minimum amount; adjustments.

(1)[1] From the sums available pursuant to section 720(b)(2) of this title for any fiscal year for grants to States to assist them in meeting the costs described in section 741 of this title, each State shall be entitled to an allotment of an amount bearing the same ratio to such sums as the population of the State bears to the population of all the States. The allotment to any State under the preceding sentence for any fiscal year which is less than $50,000 shall be increased to that amount, and for the fiscal year ending June 30, 1974, no State shall receive less than the amount necessary to cover up to 90 per centum of the cost of continuing projects assisted under section 4(a)(2)(A) of the Vocational Rehabilitation Act, except that no such project may receive financial assistance under both the Vocational Rehabilitation Act and this chapter for a total period of time in excess of three years. The total of the increase required by the preceding sentence shall be derived by proportionately reducing the allotments to each of the remaining States under the first sentence of this section, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from thereby being reduced to less than $50,000.

(b) Unused funds; redistribution; increase in amount.

Whenever the Secretary determines that any amount of an allotment to a State for any fiscal year will not be utilized by such State in carrying out the purposes of this section, he shall make such amount available for carrying out the purposes of this section to one or more other States which he determines will be able to use additional amounts during such year for carrying out such purposes. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for purposes of this part, be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year. (Pub. L. 93–112, title I, § 120, Sept. 26, 1973, 87 Stat. 372.)

[1] So in original. There is no paragraph (2).

REFERENCES IN TEXT

Vocational Rehabilitation Act and section 4(a)(2)(A) of such Act, referred to in subsec. (a)(1), refers to act June 2, 1920, ch. 219, 41 Stat. 735, as amended, and section 4(a)(2)(A) of such Act, as amended, which were classified to chapter 4 (sections 31 to 41c and 42–1 to 42b) and section 34(a)(2)(A) of this title, were repealed by section 500(a) of Pub. L. 93–112, effective 90 days after Sept. 26, 1973, and are now covered by this chapter and section 741 of this title, respectively. See section 790 of this title.

§ 741. Payments to States.

(a) Cost of planning, preparing for, and initiating special programs; prior approval of Secretary or State agency for certain expenditures.

From each State's allotment under this part for any fiscal year, the Secretary shall pay to such State or, at the option of the State agency designated pursuant to section 721(a)(1) of this title, to a public or nonprofit organization or agency, a portion of the cost of planning, preparing for, and initiating special programs under the State plan approved pursuant to section 721 of this title to expand vocational rehabilitation services, including programs to initiate or expand such services to individuals with the most severe handicaps, or of special programs under such State plan to initiate or expand services to classes of handicapped individuals who have unusual and difficult problems in connection with their rehabilitation, particularly handicapped individuals who are poor, and responsibility for whose treatment, education, and rehabilitation is shared by the State agency designated in section 721 of this title with other agencies. The Secretary may require that any portion of a State's allotment under this section, but not more than 50 per centum of such allotment, may be expended in connection with only such projects as have first been approved by the Secretary. Any grant of funds under this section which will be used for direct services to handicapped individuals or for establishing or maintaining facilities which will render direct services to such individuals must have the prior approval of the appropriate State agency designated pursuant to section 721 of this title.

(b) Duration; period of availability; limitation; non-Federal share.

Payments under this section with respect to any project may be made for a period of not to exceed three years beginning with the commencement of the project as approved, and sums appropriated for grants under this section shall remain available for such grants through the fiscal year ending June 30, 1977. Payments with respect to any project may not exceed 90 per centum of the cost of such project. The non-Federal share of the cost of a project may be in cash or in kind and may include funds spent for project purposes by a cooperating public or nonprofit agency provided that it is not included as a cost in any other federally financed program.

(c) Advances; reimbursement; conditions.

Payments under this section may be made in advance or by way of reimbursement for services performed and purchases made, as may be determined by the Secretary, and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of this section. (Pub. L. 93–112, title I, § 121, Sept. 26, 1973, 87 Stat. 373, amended Pub. L. 93–516, title I, § 102(c), Dec. 7, 1974, 88 Stat. 1618.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–516 substituted "June 30, 1977" for "June 30, 1976".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 740 of this title.

PART D.—COMPREHENSIVE SERVICE NEEDS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 720 of this title.

§ 750. Special study, research, and demonstrations.

(a) Statement of objectives; intergovernmental coordination of programs.

The Secretary shall conduct a comprehensive study, including research and demonstration projects of the feasibility of methods designed (1) to prepare individuals with the most severe handicaps for entry into programs under this chapter who would not otherwise be eligible to enter such programs due to the severity of their handicap, and (2) to assist individuals with the most severe handicaps who, due to the severity of their handicaps or other factors such as their age, cannot reasonably be expected to be rehabilitated for employment but for whom a program of rehabilitation could improve their ability to live independently or function normally within their family and community. Such study shall encompass the extent to which other programs administered by the Secretary do or might contribute to the objectives set forth in clauses (1) and (2) of the preceding sentence and the methods by which all such programs can be coordinated at Federal, State, and local levels with those carried out under this chapter to the end that individuals with the most severe handicaps are assured of receiving the kinds of assistance necessary for them to achieve such objectives.

(b) Report to Congress and President.

The Secretary shall report the findings of the study, research, and demonstrations directed by subsection (a) of this section to the Congress and to the President together with such recommendations for legislative or other action as he may find desirable, not later than June 30, 1975. (Pub. L. 93–112, title I, § 130, Sept. 26, 1973, 87 Stat. 374, amended Pub. L. 93–516, title I, § 111(g), Dec. 7, 1974, 88 Stat. 1621.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–516 substituted "June 30, 1975" for "February 1, 1975".

SUBCHAPTER II.—RESEARCH AND TRAINING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 780, 783 of this title.

§ 760. Congressional declaration of purpose.

The purpose of this subchapter is to authorize Federal assistance to State and public or nonprofit agencies and organizations to—

(a) plan and conduct research, demonstrations, and related activities in the rehabilitation of handicapped individuals, and

(b) plan and conduct courses of training and related activities designed to provide increased numbers of train rehabilitation personnel, to increase the levels of skills of such personnel, and to develop improved methods of providing such training.

(Pub. L. 93–112, title II, § 200, Sept. 26, 1973, 87 Stat. 374.)

§ 761. Authorization of appropriations.

(a) In order to make grants and contracts to carry out the purposes of this subchapter, there is authorized to be appropriated:

(1) For the purpose of carrying out section 762 of this title, $25,000,000 each for the fiscal years ending June 30, 1974, June 30, 1975, and $32,000,000 for the fiscal year ending June 30, 1976; and there is further authorized to be appropriated for such purpose for each such year such additional sums as the Congress may determine to be necessary. Of the sums appropriated under this paragraph, 20 per centum and 25 per centum of the amounts appropriated in the first and second such fiscal years, respectively, and 25 per centum of the amounts appropriated in each succeeding fiscal year shall be available only for the purpose of carrying out activities under section 762(b)(2) of this title.

(2) For the purpose of carrying out section 763 of this title, $27,700,000 each for the fiscal years ending June 30 1974, and June 30, 1975, and $32,000,000 for the fiscal year ending June 30, 1976; and there is further authorized to be appropriated for such purpose for each such year such additional sums as the Congress may determine to be necessary.

(b) Funds appropriated under this subchapter shall remain available until expended. (Pub. L. 93–112, title II, § 201, Sept. 26, 1973, 87 Stat. 374, amended Pub. L. 93–516, title I, § 103, Dec. 7, 1974, 88 Stat. 1618.)

AMENDMENTS

1974—Subsec. (a)(1). Pub. L. 93–516 § 103 (1), (2), added provisions authorizing appropriation of $32,000,000 for the fiscal year ending June 30, 1976, and substituted "such fiscal years, respectively, and 25 per centum of the amounts appropriated in each succeeding fiscal year" for "such fiscal years, respectively,".

Subsec. (a)(2). Pub. L. 93–516, § 103(3), added provisions authorizing appropriation of $32,000,000 for the fiscal year ending June 30, 1976.

§ 762. Research.

(a) Federal grants and contracts for certain research projects and related activities.

The Secretary, through the Commissioner, and in coordination with other appropriate programs in the Department of Health, Education, and Welfare, is authorized to make grants to and contracts with

States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the cost of projects for the purpose of planning and conducting research, demonstrations, and related activities which bear directly on the development of methods, procedures, and devices to assist in the provision of vocational rehabilitation services to handicapped individuals, especially those with the most severe handicaps, under this chapter. Such projects may include medical and other scientific, technical, methodological, and other investigations into the nature of disability, methods of analyzing it, and restorative techniques; studies and analyses of industrial, vocational, social, psychological, economic, and other factors affecting rehabilitation of handicapped individuals; special problems of homebound and institutionalized individuals; studies analyses, and demonstrations of architectural and engineering design adapted to meet the special needs of handicapped individuals; and related activities which hold promise of increasing knowledge and improving methods in the rehabilitation of handicapped individuals and individuals with the most severe handicaps.

(b) Federal grants for specialized research activities.

In addition to carrying out projects under subsection (a) of this section, the Secretary, through the Commissioner, and in coordination with other appropriate programs in the Department of Health, Education, and Welfare, is authorized to make grants to pay part or all of the cost of the following specialized research activities:

(1) Rehabilitation Research and Training Centers; establishment.

Establishment and support of Rehabilitation Research and Training Centers to be operated in collaboration with institutions of higher education for the purpose of providing coordinated and advanced programs of research in rehabilitation and training of rehabilitation research personnel, including, but not limited to, graduate training. Grants may include funds for services rendered by such a center to handicapped individuals in connection with such research and training activities.

(2) Rehabilitation Engineering Research Centers; establishment.

Establishment and support of Rehabilitation Engineering Research Centers to (A) develop innovative methods of applying advanced medical technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems through planning and conducting research, including cooperative research with public or private agencies and organizations, designed to produce new scientific knowledge, equipment, and devices suitable for solving problems in the rehabilitation of handicapped individuals and for reducing environmental barriers, and to (B) cooperate with State agencies designated pursuant to section 721 of this title in developing systems of information exchange and coordination to promote the prompt utilization of engineering and other scientific research to assist in solving problems in the rehabilitation of handicapped individuals.

(3) Spinal cord injury research.

Conduct of a program for spinal cord injury research, to include support of spinal cord injuries projects and demonstrations established pursuant to section 773(b) of this title, which will (A) insure dissemination of research findings among all such centers, (B) provide encouragement and support for initiatives and new approaches by individual and institutional investigators, and (C) establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts, in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among spinal cord injury investigators.

(4) End-stage renal disease research; prohibition against participation of persons eligible for services under other provisions of law.

Conduct a program for end-stage renal disease research, to include support of projects and demonstrations for providing special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the rehabilitation of individuals suffering from such disease and which will (A) insure dissemination of research findings, (B) provide encouragement and support for initiatives and new approaches by individual and institutional investigators, and (C) establish and maintain close working relationships with other governmental and voluntary institutions and organizations engaged in similar efforts, in order to unify and coordinate scientific efforts, encourage joint planning, and promote the interchange of data and reports among investigators in the field of end-stage renal disease. No person shall be selected to participate in such program who is eligible for services for such disease under any other provision of law.

(5) International rehabilitation research and development.

Conduct of a program for international rehabilitation research, demonstration, and training for the purpose of developing new knowledge and methods in the rehabilitation of handicapped individuals in the United States, cooperating with and assisting in developing and sharing information found useful in other nations in the rehabilitation of handicapped individuals, and initiating a program to exchange experts and technical assistance in the field of rehabilitation of handicapped individuals with other nations as a means of increasing the levels of skill of rehabilitation personnel.

(c) General grant and contract requirements applicable.

The provisions of section 776 of this title shall apply to assistance provided under this section, unless the context indicates to the contrary. (Pub. L. 93–112, title II, § 202, Sept. 26, 1973, 87 Stat. 375, amended Pub. L. 93–516, title I, § 111(h), Dec. 7, 1974, 88 Stat. 1621.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516 substituted "studies, analyses, and demonstrations of architectural and engineering design adapted to meet the special needs of handicapped individuals" for "studies and analyses of

of architectural and engineering design adapted to meet the special needs of handicapped individuals".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 761, 781 of this title; title 38 section 1904.

§ 763. Training.

(a) Federal grants and contracts for personnel projects relating to training, traineeships, and related activities.

The Secretary, through the Commissioner, in coordination with other appropriate programs in the Department of Health, Education, and Welfare, is authorized to make grants to and contracts with States and public or nonprofit agencies and organizations, including institutions of higher education, to pay part of the cost of projects for training, traineeships, and related activities designed to assist in increasing the numbers of personnel trained in providing vocational services to handicapped individuals and in performing other functions necessary to the development of such services.

(b) Balanced program of assistance meeting needs of public and private rehabilitation programs and institutions; description of projects and fields contributing to rehabilitation of handicapped individuals; study period limitation.

In making such grants or contracts, funds made available for any year will be utilized to provide a balanced program of assistance to meet the medical, vocational, and other personnel training needs of both public and private rehabilitation programs and institutions, to include projects in rehabilitation medicine, rehabilitation nursing, rehabilitation counseling, rehabilitation social work, rehabilitation psychology, physical therapy, occupational therapy, speech pathology and audiology, workshop and facility administration, prosthetics and orthotics, specialized personnel in providing services to blind and deaf individuals, recreation for ill and handicapped individuals, and other fields contributing to the rehabilitation of handicapped individuals, including homebound and institutionalized individuals and handicapped individuals with limited English-speaking ability. No grant shall be made under this section for furnishing to an individual any one course of study extending for a period in excess of four years. (Pub. L. 93–112, title II, § 203, Sept. 26, 1973, 87 Stat. 376.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 761 of this title.

§ 764. Annual report to Congress; coverage of research and training activities.

There shall be included in the annual report to the Congress required by section 784 of this title a full report on the research and training activities carried out under this subchapter and the extent to which such research and training has contributed directly to the development of methods, procedures, devices, and trained personnel to assist in the provision of vocational rehabilitation services to handicapped individuals and those with the most severe handicaps under this chapter. (Pub. L. 93–112, title II, § 204, Sept. 26, 1973, 87 Stat. 376.)

SUBCHAPTER III.—SPECIAL FEDERAL RESPONSIBILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 706, 780, 783 of this title.

§ 770. Congressional declaration of purpose.

The purpose of this subchapter is to—

(1) authorize grants and contracts to assist in the construction and initial staffing of rehabilitation facilities;

(2) authorize grants and contracts to assist in the provision of vocational training services to handicapped individuals;

(3) authorize grants for special projects and demonstrations which hold promise of expanding or otherwise improving rehabilitation services to handicapped individuals, including individuals with spinal cord injuries, older blind individuals, and deaf individuals whose maximum vocational potential has not been reached, which experiment with new types of patterns of services or devices for the rehabilitation of handicapped individuals (including opportunities for new careers for handicapped individuals, and for other individuals in programs serving handicapped individuals) and which provide vocational rehabilitation services to handicapped migratory agricultural workers or seasonal farmworkers;

(4) establish and operate a National Center for Deaf-Blind Youth and Adults; and

(5) establish uniform grant and contract requirements for programs assisted under this subchapter and certain other provisions of this chapter.

(Pub. L. 93–112, title III, § 300, Sept. 26, 1973, 87 Stat. 377.)

§ 771. Grants for construction of rehabilitation facilities, initial staffing, and planning assistance.

(a) Authorization of appropriations; period of availability of moneys.

For the purpose of making grants and contracts under this section for construction of rehabilitation facilities, initial staffing, and planning assistance, there is authorized to be appropriated such sums as may be necessary for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976. Amounts so appropriated shall remain available for expenditure with respect to construction projects funded or initial staffing grants made under this section prior to July 1, 1978.

(b) Rehabilitation facilities construction grants; applications for assistance; general grant and contract requirements applicable; amount.

(1) The Secretary is authorized to make grants to assist in meeting the costs of construction of public or nonprofit rehabilitation facilities. Such grants may be made to States and public or nonprofit organizations and agencies for projects for which applications are approved by the Secretary under this section.

(2) To be approved, an application for a grant for a construction project under this section must conform to the provisions of section 776 of this title.

(3) The amount of a grant under this section with respect to any construction project in any State shall be equal to the same percentage of the cost of such project as the Federal share which is applicable in the case of rehabilitation facilities (as defined in section 291o(g) of Title 42), in such State, except that if the Federal share with respect to rehabilitation facilities in such State is determined pursuant to subsection (b)(2) of section 291o of Title 42, the percentage of the cost for purposes of this section shall be determined in accordance with regulations prescribed by the Secretary designed to achieve as nearly as practicable results comparable to the results obtained under such subparagraph.

(c) Staffing grants; amount.

The Secretary is also authorized to make grants to assist in the initial staffing of any public or nonprofit rehabilitation facility constructed after September 26, 1973 (whether or not such construction was financed with the aid of a grant under this section) by covering part of the costs (determined in accordance with regulations the Secretary shall prescribe) of compensation of professional or technical personnel of such facility during the period beginning with the commencement of the operation of such facility and ending with the close of four years and three months after the month in which such operation commenced. Such grants with respect to any facility may not exceed 75 per centum of such costs for the period ending with the close of the fifteenth month following the month in which such operation commenced, 60 per centum of such costs for the first year thereafter, 45 per centum of such costs for the second year thereafter, and 30 per centum of such costs for the third year thereafter.

(d) Planning grants.

The Secretary is also authorized to make grants upon application approved by the State agency designated under section 721 of this title to administer the State plan, to public or nonprofit agencies, institutions, or organizations to assist them in meeting the cost of planning rehabilitation facilities and the services to be provided by such facilities. (Pub. L. 93–112, title III, § 301, Sept. 26, 1973, 87 Stat. 377, amended Pub. L. 93–516, title I, § 104, Dec. 7, 1974, 88 Stat. 1618.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516 extended authorization of appropriation for fiscal year ending June 30, 1976, and substituted "July 1, 1978" for "July 1, 1977".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 706 of this title.

§ 772. Vocational training services for handicapped individuals.

(a) Authorization of appropriations.

For the purpose of making grants and contracts under this section, there is authorized to be appropriated such sums as may be necessary for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976.

(b) Grants; authority of Secretary; individual allowances: factors and limitations; conditions.

(1) The Secretary is authorized to make grants to States and public or nonprofit organizations and agencies to pay up to 90 per centum of the cost of projects for providing vocational training services to handicapped individuals, especially those with the most severe handicaps, in public or nonprofit rehabilitation facilities.

(2)(A) Vocational training services for purposes of this subsection shall include training with a view toward career advancement; training in occupational skills; related services, including work evaluation, work testing, provision of occupational tools and equipment required by the individual to engage in such training, and job tryouts; and payment of weekly allowances to individuals receiving such training and related services.

(B) Such allowances may not be paid to any individual for any period in excess of two years, and such allowances for any week shall not exceed $30 plus $10 for each of the individual's dependents, or $70, whichever is less. In determining the amount of such allowances for any individual, consideration shall be given to the individual's need for such an allowance, including any expenses reasonably attributable to receipt of training services, the extent to which such an allowance will help assure entry into and satisfactory completion of training, and such other factors, specified by the Secretary, as will promote such individual's capacity to engage in gainful and suitable employment.

(3) The Secretary may make a grant for a project pursuant to this subsection only on his determination that (A) the purpose of such project is to prepare handicapped individuals, especially those with the most severe handicaps, for gainful and suitable employment; (B) the individuals to receive training services under such project will include only those who have been determined to be suitable for and in need of such training services by the State agency or agencies designated as provided in section 721(a)(1) of this title of the State in which the rehabilitation facility is located; (C) the full range of training services will be made available to each such individual, to the extent of his need for such services; and (D) the project, including the participating rehabilitation facility and the training services provided, meet such other requirements as he may prescribe in regulations for carrying out the purposes of this subsection.

(c) Operation grants; buildings' use prohibition.

(1) The Secretary is authorized to make grants to public or nonprofit rehabilitation facilities, or to an organization or combination of such facilities, to pay the Federal share of the cost of projects to analyze, improve, and increase their professional services to handicapped individuals, their management effectiveness, or any other part of their operations affecting their capacity to provide employment and services for such individuals.

(2) No part of any grant made pursuant to this subsection may be used to pay costs of acquiring, constructing, expanding, remodeling, or altering any building. (Pub. L. 93–112, title III, § 302, Sept. 26, 1973, 87 Stat. 378, amended Pub. L. 93–516, title I, § 105, Dec. 7, 1974, 88 Stat. 1619.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516 extended authorization of appropriation for fiscal year ending June 30, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 776 of this title.

§ 773. Mortgage insurance for rehabilitation facilities.

(a) Statement of purpose.

It is the purpose of this section to assist and encourage the provision of urgently needed facilities for programs for handicapped individuals.

(b) Definitions.

For the purpose of this section the terms "mortgagee", "maturity date", and "State" shall have the meanings respectively set forth in section 1713 of Title 12.

(c) Authority of Secretary; amount; terms and conditions; commitment date; Federal tax exemption of interest.

The Secretary, in consultation with the Secretary of Housing and Urban Development, and subject to the provisions of section 776 of this title, is authorized to insure up to 100 per centum of any mortgage (including advances on such mortgage during construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon, except that no mortgage of any public agency shall be insured under this section if the interest from such mortgage is exempt from Federal taxation.

(d) Conditions.

In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers construction of a public or nonprofit rehabilitation facility, including equipment to be used in its operation, subject to the following conditions:

(1) The mortgage shall be executed by a mortgagor, approved by the Secretary, who demonstrates ability successfully to operate one or more programs for handicapped individuals. The Secretary may in his discretion require any such mortgagor to be regulated or restricted as to minimum charges and methods of financing, and, in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts, with and acquire for not to exceed $100 such stock of interest in, such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the Rehabilitation Facilities Insurance Fund (established by subsection (h) of this section), and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in an amount not to exceed 90 per centum of the estimated replacement cost of the property or project, including equipment to be used in the operation of the rehabilitation facility, when the proposed improvements are completed and the equipment is installed, but not including any cost covered by grants in aid under this chapter or any other Federal Act.

(3) The mortgage shall—

(A) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe, and

(B) bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum on the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market.

(e) Premium and appraisal charges; annual payment in advance; limitation.

The Secretary shall fix and collect premium charges for the insurance of mortgages under this section which shall be payable annually in advance by the mortgagee, either in cash or in debentures of the Rehabilitation Facilities Insurance Fund (established by subsection (h) of this section) issued at par plus accrued interest. In the case of any mortgage such charge shall be not less than an amount equivalent to one-fourth of 1 per centum per annum nor more than an amount equivalent to 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any one time, without taking into account delinquent payments or prepayments. In addition to the premium charge herein provided for, the Secretary is authorized to charge and collect such amounts as he may deem reasonable for the appraisal of a property or project during construction, but such charges for appraisal and inspection shall not aggregate more than 1 per centum of the original principal face amount of the mortgage.

(f) Release of property from lien; terms and conditions.

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he shall by regulation prescribe.

(g) Functions, powers, and duties of Secretary; formal delegation agreement for delegation of functions; rental housing insurance provisions applicable.

(1) The Secretary shall have the same functions, powers, and duties (insofar as applicable) with respect to the insurance of mortgages under this section as the Secretary of Housing and Urban Development has with respect to the insurance of mortgages under title II of the National Housing Act. The Secretary may, pursuant to a formal delegation agreement containing regulations prescribed by him, delegate to the Secretary of Housing and Urban Development authority to administer this section in accordance with such delegation agreement.

(2) The provisions of subsections (e), (g), (h), (i), (j), (k), (*l*), and (n) of section 1713 of Title 12 shall apply to mortgages insured under this section; except that, for the purposes of their application with respect to such mortgages, all references in such provisions to the General Insurance Fund shall be deemed to refer to the Rehabilitation Facilities Insurance Fund (established by subsection (h) of this section) and all references in such provisions to "Secretary" shall be deemed to refer to the Secretary of Health, Education, and Welfare.

(h) Rehabilitation Facilities Insurance Fund; establishment; revolving fund; charges for general operational expenses of Rehabilitation Services Administration relating to insured mortgages; deposit in Treasury or investment of unused funds; debentures, purchase authority; credits and debits; authorization of appropriations; total mortgage insurance limitation.

(1) There is hereby created a Rehabilitation Facilities Insurance Fund which shall be used by the Commissioner as a revolving fund for carrying out all the insurance provisions of this section. All mortgages insured under this section shall be insured under and be the obligation of the Rehabilitation Facilities Insurance Fund.

(2) The general expenses of the operations of the Rehabilitation Services Administration relating to mortgages insured under this section may be charged to the Rehabilitation Facilities Insurance Fund.

(3) Moneys in the Rehabilitation Facilities Insurance Fund not needed for the current operations of the Rehabilitation Services Administration with respect to mortgages insured under this section shall be deposited with the Treasurer of the United States to the credit of such fund, or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States. The Commissioner may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued as obligations of the Rehabilitation Facilities Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

(4) Premium charges, adjusted premium charges, and appraisals and other fees received on account of the insurance of any mortgage under this section, the receipts derived from property covered by such mortgages and from any claims, debts, contracts, property, and security assigned to the Secretary in connection therewith, and all earnings as the assets of the fund, shall be credited to the Rehabilitation Facilities Insurance Fund. The principal of, and interest paid and to be paid on, debentures which are the obligation of such fund, cash insurance payments, and adjustments, and expense incurred in the handling, management, renovation, and disposal of properties acquired, in connection with mortgages insured under this section, shall be charged to such fund.

(5) There are authorized to be appropriated to provide initial capital for the Rehabilitation Facilities Insurance Fund, and to assure the soundness of such fund thereafter, such sums as may be necessary, except that the total amount of outstanding mortgages insured shall not exceed $200,000,000. (Pub. L. 93–112, title III, § 303, Sept. 26, 1973, 87 Stat. 379.)

REFERENCES IN TEXT

Title II of the National Housing Act, referred to in subsec. (g)(1), is classified to section 1707 et seq. of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 762 of this title.

§ 774. Special projects and demonstrations.

(a) Authorization of appropriations.

(1) For the purpose of making grants under this section for special projects and demonstrations (and research and evaluation connected therewith) there is authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1974, $17,000,000 for the fiscal year ending June 30, 1975, and $20,000,000 for the fiscal year ending June 30, 1976; and there is further authorized to be appropriated for such purposes for each such year such additional sums as the Congress may determine to be necessary.

(2) Of the amounts appropriated pursuant to paragraph (1) of this subsection, 5 per centum in each such fiscal year shall be available only for the purpose of making grants under subsection (c) of this section, and there is authorized to be appropriated in each such fiscal year such additional amount as may be necessary to equal, when added to the amount made available for the purpose of making grants under such subsection an amount of $5,000,000 to be available for each such fiscal year.

(b) Severely handicapped individuals, persons with spinal cord injuries, older blind individuals, and deaf individuals; regional system of multidisciplinary services for spinal cord injuries.

The Secretary, subject to the provisions of section 776 of this title, shall make grants to States and public or nonprofit agencies and organizations for paying part or all of the cost of special projects and demonstrations (and research and evaluation in connection therewith) (1) for establishing programs and facilities for providing vocational rehabilitation services which hold promise of expanding or otherwise improving rehabilitation services to handicapped individuals (especially those with the most severe handicaps) including individuals with spinal cord injuries, older blind individuals, and deaf individuals, whose maximum vocational potential has not been reached, (2) for applying new types or patterns of services or devices (including opportunities for new careers for handicapped individuals or other individuals in programs servicing handicapped individuals) and (3) for operating programs (including renovation and construction of facilities, where appropriate) to demonstrate methods of making recreational activities fully accessible to handicapped individuals. Projects and demonstrations providing services to individuals with spinal cord injuries shall include provisions to—

(A) establish, on an appropriate regional basis, a multidisiciplinary system of providing vocational and other rehabilitation services, specifically designed to meet the special needs of individuals with spinal cord injuries, including acute care as well as periodic inpatient or outpatient followup and services;

(B) demonstrate and evaluate the benefits to individuals with spinal cord injuries served in, and the degree of cost effectiveness of, such a regional system;

(C) demonstrate and evaluate existing, new, and improved methods and equipment essential to the care, management, and rehabilitation of individuals with spinal cord injuries; and

(D) demonstrate and evaluate methods of community outreach for individuals with spinal cord injuries and community education in connection with the problems of such individuals in areas such as housing, transportation, recreation, employment, and community activities.

(c) Handicapped migratory agricultural workers and seasonal farmworkers, and their families.

The Secretary, subject to the provisions of section 776 of this title, is authorized to make grants to any State agency designated pursuant to a State plan approved under section 721 of this title or to any local agency participating in the administration of such a plan, to pay up to 90 per centum of the cost of projects or demonstrations for the provision of vocational rehabilitation services to handicapped individuals, as determined in accordance with rules prescribed by the Secretary of Labor, who are migratory agricultural workers or seasonal farmworkers, and to members of their families (whether or not handicapped) who are with them, including maintenance and transportation of such individuals and members of their families where necessary to the rehabilitation of such individuals. Maintenance payments under this section shall be consistent with any maintenance payments made to other handicapped individuals in the State under this chapter. Such grants shall be conditioned upon satisfactory assurance that in the provision of such services there will be appropriate cooperation between the grantee and other public or nonprofit agencies and organizations having special skills and experience in the provision of services to migratory agricultural workers, seasonal farmworkers, or their families. This subsection shall be administered in coordination with other programs serving migrant agricultural workers and seasonal farmworkers, including programs under title I of the Elementary and Secondary Education Act of 1965, section 311 of the Economic Opportunity Act of 1964, the Migrant Health Act, and the Farm Labor Contractor Registration Act of 1963.

(d) Employment programs; contract authority.

The Secretary is authorized to make contracts or jointly financed cooperative arrangements with employers and organizations for the establishment of projects designed to prepare handicapped individuals for gainful and suitable employment in the competitive labor market under which handicapped individuals are provided training and employment in a realistic work setting and such other services (determined in accordance with regulations prescribed by the Secretary) as may be necessary for such individuals to continue to engage in such employment.

(e) Technical assistance; compensation and travel expenses.

(1) The Secretary is authorized, directly or by contract with State vocational rehabilitation agencies or experts or consultants or groups thereof, to provide technical assistance (A) to rehabilitation facilities, and (B) with the concurrence of the Board established by section 792 of this title, for the purpose of removal of architectural and transportation barriers, to any public or nonprofit agency, institution, organization or facility.

(2) Any such experts or consultants shall, while serving pursuant to such contracts, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the pro rata pay rate for a person employed as a GS–18, under section 5332 of Title 5, including traveltime, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently. (Pub. L. 93–112, title III, § 304, Sept. 26, 1973, 87 Stat. 381, amended Pub. L. 93–516, title I, §§ 106, 111(i)–(k), Dec. 7, 1974, 88 Stat. 1619, 1621.)

REFERENCES IN TEXT

Title I of Elementary and Secondary Education Act of 1965, referred to in subsec. (c), is classified to section 241a et seq. of Title 20, Education.

Section 311 of Economic Opportunity Act of 1964, referred to in subsec. (c), is classified to section 2861 of Title 42, The Public Health and Welfare.

Migrant Health Act, referred to in subsec. (c), probably means section 319, formerly section 310, of the Public Health Service Act as redesignated and amended, which is presently set out as section 247d of Title 42, The Public Health and Welfare.

Farm Labor Contractor Registration Act of 1963, referred to in subsec. (c), is classified to chapter 52 (§ 2041 et seq.) of Title 7, Agriculture.

AMENDMENTS

1974—Subsec. (a)(1) Pub. L. 93–516, 106, added provisions authorizing apropriation of $20,000,000 for the fiscal year ending June 30, 1976.

Subsec. (b). Pub. L. 93–516, § 111(i) (1), (2), substituted "handicapped individuals or other individuals" for "handicapped individuals for other individuals" in the parenthetical provisions in cl. (2), and added cl. (3).

Subsec. (c). Pub. L. 93–516, § 111(j), substituted "prescribed by the Secretary of Labor, who are migratory" for "prescribed by the Secretary of Labor, are migratory".

Subsec. (e)(1). Pub. L. 93–516, § 111(k), substituted "with the concurrence of the Board established by section 792 of this title, for the purpose of" for "for the purpose of" in par. (1)(B).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 732 of this title; title 42 section 6081.

§ 775. National Center for Deaf-Blind Youths and Adults.

(a) Authorization of appropriations.

For the purpose of establishing and operating a National Center for Deaf-Blind Youths and Adults, there is authorized to be appropriated such sums as may be necessary for construction, which shall remain available until expended, and such sums as may be necessary for operations for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976.

(b) Statement of purposes; agreement for establishment and operation; designation.

In order—

(1) to demonstrate methods of (A) providing the specialized intensive services, and other services, needed to rehabilitate handicapped individuals who are both deaf and blind, and (B) training the professional and allied personnel needed adequately to staff facilities specifically designed to provide such services and training to such personnel who have been or will be working with deaf-blind individuals;

(2) to conduct research in the problems of, and ways of meeting the problems of rehabilitating, deaf-blind individuals; and

(3) to aid in the conduct of related activities which will expand or improve the services for or help improve public understanding of the problems of deaf-blind individuals;

the Secretary, subject to the provisions of section 776 of this title, is authorized to enter into an agreement with any public or nonprofit agency or organization for payment by the United States of all or part of the costs of the establishment and operation, including construction and equipment, of a center for vocational rehabilitation of handicapped individuals who are both deaf and blind, which center shall be known as the National Center for Deaf-Blind Youths and Adults.

(c) Proposals; preference.

Any agency or organization desiring to enter into such agreement shall submit a proposal therefor at such time, in such manner, and containing such information as may be prescribed in regulations by the Secretary. In considering such proposals the Secretary shall give preference to proposals which (1) give promise of maximum effectiveness in the organization and operation of such Center, and (2) give promise of offering the most substantial skill, experience, and capability in providing a broad program of service, research, training, and related activities in the field of rehabilitation of deaf-blind individuals. (Pub. L. 93–112, title III, § 305, Sept. 26, 1973, 87 Stat. 383, amended Pub. L. 93–516, title I, § 107, Dec. 7, 1974, 88 Stat. 1619.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516 extended authorization of appropriation for fiscal year ending June 30, 1976.

Reporting Requirements of National Center for Deaf-Blind Youth and Adults

Pub. L. 93–608, § 1(8), Jan. 2, 1975, 88 Stat. 1968, provided that: "Section 16(c) of the Vocational Rehabilitation Act (81 Stat. 251; 29 U.S.C. 42a(c)) [former section 42a(c) of this title], is amended by striking out paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively, thereby eliminating the annual report of the National Center for Deaf-Blind Youths and Adults, through the Secretary of the Department of Health, Education, and Welfare, to the Congress with comments and recommendations as the Secretary deems appropriate."

§ 776. General grant and contract requirements.

(a) Applicability of provisions; compliance with provisions, exceptions.

The provisions of this section shall apply to all projects approved and assisted under this subchapter. The Secretary shall insure compliance with this section prior to making any grant or entering into any contract or agreement under this subchapter, except projects authorized under section 772 of this title.

(b) Construction project requirements; assurances; use of funds for intended purposes; report to Congress; plans and specifications; labor standards.

To be approved, an application for assistance for a construction project, or for a project which involves construction, under this subchapter must—

(1) contain or be supported by reasonable assurances that (A) for a period of not less than twenty years after completion of construction of the project it will be used as a public or nonprofit facility, (B) sufficient funds will be available to meet the non-Federal share of the cost of construction of the project, and (C) sufficient funds will be available, when construction of the project is completed, for its effective use for its intended purpose;

(2) provide that Federal funds provided to any agency or organization under this subchapter will be used only for the purposes for which provided and in accordance with the applicable provisions of this section and the section under which such funds are provided;

(3) provide that the agency or organization receiving Federal funds under this subchapter will make an annual report to the Secretary, which he shall summarize and comment upon in the annual report to the Congress submitted under section 784 of this title;

(4) be accompanied or supplemented by plans and specifications which have been approved by the Board established by section 792 of this title, in which due consideration shall be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 per centum of the cost of the project), and which comply with regulations prescribed by the Secretary related to minimum standards of construction and equipment (promulgated with particular emphasis on securing compliance), with the requirements of the Architectural Barriers Act of 1968, and with regulations of the Secretary of Labor relating to occupational health and safety standards for rehabilitation facilities; and

(5) contain or be supported by reasonable assurance that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction aided by payments pursuant to any grant under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with Davis-Bacon Act, as amended; and the Secretary of Labor shall have, with respect to the labor standards specified in this paragraph, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40.

(c) Reservation of grant funds; additional payments.

Upon approval of any application for a grant or contract for a project under this subchapter, the Secretary shall reserve, from any appropriation available therefore, the amount of such grant or contract determined under this subchapter. In case an amendment to an approved application is approved, or the estimated cost of a project is revised upward, any additional payment with respect thereto

may be made from the appropriation from which the original reservation was made or the appropriation for the fiscal year in which such amendment or revision is approved.

(d) Recovery of Federal share upon cessation of public or nonprofit character of facilities.

If, within twenty years after completion of any construction project for which funds have been paid under this subchapter, the facility shall cease to be a public or nonprofit facility, the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the then value (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated) of the facility, as the amount of the Federal participation bore to the cost of construction of such facility.

(e) Payments; adjustments for overpayments or underpayments; advances; reimbursement; installments; conditions.

Payment of assistance or reservation of funds made pursuant to this subchapter may be made (after necessary adjustment on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.

(f) Workshops; residential accommodations.

A project for construction of a rehabilitation facility which is primarily a workshop may, where approved by the Secretary as necessary to the effective operation of the facility, include such construction as may be necessary to provide residential accommodations for use in connection with the rehabilitation of handicapped individuals.

(g) Sectarian activities; funds prohibition.

No funds provided under this subchapter may be used to assist in the construction of any facility which is or will be used for religious worship or any sectarian activity.

(h) Execution of direct services to handicapped individuals.

When in any State, funds provided under this subchapter will be used for providing direct services to handicapped individuals or for establishing facilities which will provide such services, such services must be carried out in a manner not inconsistent with the State plan approved pursuant to section 721 of this title.

(i) State agency commentary on grant or contract.

Prior to making any grant or entering into any contract under this subchapter, the Secretary shall afford reasonable opportunity to the appropriate State agency or agencies designated pursuant to section 721 of this title to comment on such grant or contract. (Pub. L. 93–112, title III, § 306, Sept. 26, 1973, 87 Stat. 384, amended Pub. L. 93–516, title I, § 111(*l*), Dec. 7, 1974, 88 Stat. 1621.)

REFERENCES IN TEXT

Architectural Barriers Act of 1968, referred to in subsec. (b)(4), is classified to chapter 51 (section 4151 et seq.) of Title 42, The Public Health and Welfare.

Davis-Bacon Act, as amended, referred to in subsec. (b)(5), is classified to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (b)(5), is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–516, § 111(*l*)(1), (2), in provisions preceding par. (1), substituted "a construction project, or for a project which involves construction, under" for "a construction project under", and in par. (4), substituted "plans and specifications which have been approved by the Board established by section 792 of this title, in which" for "plans and specifications in which".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 721, 762, 771, 773, 774, 775 of this title.

SUBCHAPTER IV.—ADMINISTRATION AND PROGRAM AND PROJECT EVALUATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 702, 706 of this title.

§ 780. Administration.

(a) Technical assistance to States; short-term traineeships; limitation of training or instruction period; specialized fields; information dissemination; promotion of rehabilitation and employment of handicapped individuals.

In carrying out his duties under this chapter, the Secretary shall—

(1) cooperate with, and render technical assistance (directly or by grant or contract) to States in matters relating to the rehabilitation of handicapped individuals;

(2) provide short-term training and instruction in technical matters relating to vocational rehabilitation services, including the establishment and maintenance of such research fellowships and traineeships, with such stipends and allowances (including travel and subsistence expenses), as he may deem necessary, except that no such training or instruction (or fellowship or scholarship) shall be provided any individual for any one course of study for a period in excess of four years, and such training, instruction, fellowships, and traineeships may be in the fields of rehabilitation medicine, rehabilitation nursing, rehabilitation counseling, rehabilitation social work, rehabilitation psychology, physical therapy, occupational therapy, speech pathology and audiology, prosthetics and orthotics, recreation for ill and handicapped individuals, and other specialized fields contributing to the rehabilitation of handicapped individuals; and

(3) disseminate information relating to vocational rehabilitation services, and otherwise promote the cause of the rehabilitation of handicapped individuals and their greater utilization in gainful and suitable employment.

(b) Rules and regulations; publication in Federal Register; delegation of powers and duties.

The Secretary is authorized to make rules and regulations governing the administration of this subchapter and subchapters I through III of this chapter, and, except as otherwise provided in this chapter, to delegate to any officer or employee of the United States such of his powers and duties under such subchapters, except the making of rules and regulations, as he finds necessary to carry out the provisions of such subchapters. Such rules and

regulations shall be published in the Federal Register, on at least an interim basis, no later than ninety days after September 26, 1973.

(c) Investigative authority of Secretary.

The Secretary is authorized (directly or by grants or contracts) to conduct studies, investigations, and evaluation of the programs authorized by this chapter, and to make reports, with respect to abilities, aptitudes, and capacities of handicapped individuals, development of their potentialities, their utilization in gainful and suitable employment, and with respect to architectural, transportation, and other environmental and attitudinal barriers to their rehabilitation, including the problems of homebound, institutionalized, and older blind individuals.

(d) Department of Health, Education, and Welfare appropriation; inclusion of sums for administration of chapter.

There is authorized to be included for each fiscal year in the appropriation for the Department of Health, Education, and Welfare such sums as are necessary to administer the provisions of this chapter.

(e) Disabled veterans; program coordination.

In carrying out his duties under this chapter, the Secretary shall insure the maximum coordination and consultation, at both national and local levels, with the Administrator of Veterans' Affairs and his designees with respect to programs for and relating to the rehabilitation of disabled veterans carried out under Title 38. (Pub. L. 93–112, title IV, § 400, Sept. 26, 1973, 87 Stat. 385.)

§ 781. Program and project evaluation.

(a) Statement of purpose; persons eligible for conducting evaluations; duties of Secretary; reports to Congressional committees.

(1) The Secretary shall measure and evaluate the impact of all programs authorized by this chapter, in order to determine their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.

(2) In carrying out his responsibilities under this subsection, the Secretary, in the case of research, demonstrations, and related activities carried out under section 762 of this title, shall, after taking into consideration the views of State agencies designated pursuant to section 721 of this title, on an annual basis—

(A) reassess priorities to which such activities should be directed; and

(B) review present research, demonstration, and related activities to determine, in terms of the purpose specified for such activities by subsection (a) of section 762 of this title, whether and on what basis such activities should be continued, revised, or terminated.

(3) The Secretary shall, within 12 months after September 26, 1973, and on each April 1 thereafter, prepare and furnish to the appropriate committees of the Congress a complete report on the determination and review carried out under paragraph (2) of this subsection, together with such recommendations, including any recommendations for additional legislation, as he deems appropriate.

(b) General evaluation standards; development and publication; renewal or supplementation of financial assistance; description in reports of action taken.

Effective July 1, 1974, before funds for the programs and projects covered by this chapter are released, the Secretary shall develop and publish general standards for evaluation of the programs and project effectiveness in achieving the objectives of this chapter. He shall consider the extent to which such standards have been met in deciding, in accordance with procedures set forth in subsection (b), (c), and (d) of section 721 of this title, whether to renew or supplement financial assistance authorized under any section of this chapter. Reports submitted pursuant to section 784 of this title shall describe the actions taken as a result of these evaluations.

(c) Program participants' views.

In carrying out evaluations under this subchapter, the Secretary shall, whenever possible, arrange to obtain the specific views of persons participating in and served by programs and projects assisted under this chapter about such programs and projects.

(d) Evaluative research results and summaries; publication; transmittal to Congressional committees.

The Secretary shall publish the results of evaluative research and summaries of evaluations of program and project impact and effectiveness no later than ninety days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such research studies and evaluation summaries.

(e) Property of United States.

The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with assistance under this chapter shall become the property of the United States. (Pub. L. 93–112, title IV, § 401, Sept. 26, 1973, 87 Stat. 386.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 721 of this title.

§ 782. Obtaining information from Federal agencies.

Such information as the Secretary may deem necessary for purposes of the evaluations conducted under this subchapter shall be made available to him, upon request, by the agencies of the executive branch. (Pub. L. 93–112, title IV, § 402, Sept. 26, 1973, 87 Stat. 387.)

§ 783. Authorization of appropriations.

There is authorized to be appropriated for the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976, such sums as the Secretary may require, but not to exceed an amount equal to one-half of 1 per centum of the funds appropriated under subchapters I, II, and III of this chapter or $1,000,000, whichever is greater, to be available to conduct

program and project evaluations as required by this subchapter. (Pub. L. 93–112, title IV, § 403, Sept. 26, 1973, 87 Stat. 387, amended Pub. L. 93–516, title I, § 108, Dec. 7, 1974, 88 Stat. 1619.)

AMENDMENTS

1974—Pub. L. 93–516 extended authorization of appropriation for fiscal year ending June 30, 1976.

§ 784. Reports to President and Congress; contents: statistical data, specific distinguishment of services, and detailed evaluation of subchapter I services.

Not later than one hundred and twenty days after the close of each fiscal year, the Secretary shall prepare and submit to the President and to the Congress a full and complete report on the activities carried out under this chapter. Such annual reports shall include (1) statistical data reflecting, with the maximum feasible detail vocational rehabilitation services provided handicapped individuals during the preceding fiscal year, (2) specifically distinguish among rehabilitation closures attributable to physical restoration, placement in competitive employment, extended or terminal employment in a sheltered workshop or rehabilitation facility, employment as a homemaker or unpaid family worker, and provision of other services, and (3) include a detailed evaluation of services provided with assistance under subchapter I of this chapter, especially services to those with the most severe handicaps. (Pub. L. 93–112, title IV, § 404, Sept. 26, 1973, 87 Stat. 387.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 764, 776, 781, 785 of this title.

§ 785. Secretarial responsibilities.

(a) Comprehensive services, long-range projection: submittal to Congress; analysis of program operation; coordinated and cooperative planning; utilization of engineering and other scientific research in described areas; information clearinghouse.

It shall be the function of the Secretary, with the assistance of agencies within the Department, other departments and agencies within the Federal Government, handicapped individuals, and public and private agencies and organizations, through the Office of the Secretary, to—

(1) prepare for submission to the Congress within eighteen months after September 26, 1973, a long-range projection for the provision of comprehensive services to handicapped individuals and for programs of research, evaluation, and training related to such services and individuals;

(2) analyze on a continuing basis and include in his report submitted under section 784 of this title, a report on the results of such analysis, program operation to determine consistency with applicable provisions of law, progress toward meeting the goals and priorities set forth in the projection required under clause (1), and the effectiveness of all programs providing services to handicapped individuals, and the elimination of unnecessary duplication and overlap in such programs under the jurisdiction of the Secretary;

(3) encourage coordinated and cooperative planning designed to produce maximum effectiveness, sensitivity, and continuity in the provision of services for handicapped individuals by all programs;

(4) develop means of promoting the prompt utilization of engineering and other scientific research to assist in solving problems in education (including promotion of the development of curriculums stressing barrier free design and the adoption of such curriculums by schools of architecture, design, and engineering), health, employment, rehabilitation, architectural, housing, and transportation barriers, and other areas so as to bring about full integration of handicapped individuals into all aspects of society;

(5) provide a central clearinghouse for information and resource availability for handicapped individuals through (A) the evaluation of systems within the Department of Health, Education, and Welfare, other departments and agencies of the Federal Government, public and private agencies and organizations, and other sources, which provide (i) information and data regarding the location, provision, and availability of services and programs for handicapped individuals, regarding research and recent medical and scientific developments bearing on handicapping conditions (and their prevention, amelioration, causes, and cures), and regarding the current numbers of handicapped individuals and their needs, and (ii) any other such relevant information and data which the Secretary deems necessary; and (B) utilizing the results of such evaluation and existing information systems, the development within such Department of a coordinated system of information and data retrieval, which will have the capacity and responsibility to provide general and specific information regarding the information and data referred to in subclause (A) of this clause to the Congress, public and private agencies and organizations, handicapped individuals and their families, professionals in fields serving such individuals, and the general public.

(b) Personnel selection.

In selecting personnel to assist in the performance of the functions assigned in subsection (a) of this section, the Secretary shall give special emphasis to qualified handicapped individuals.

(c) Delegation of functions restriction; Office for Handicapped Individuals in office of appropriate Assistant Secretary: establishment.

The functions assigned to the Secretary by this section shall not be delegated to any persons not assigned to and operating in the Office of the Secretary, except that he may establish an Office for Handicapped Individuals in the office of an appropriate Assistant Secretary of the Department of Health, Education, and Welfare to carry out such functions. In no event shall any functions under this section be further delegated to any persons with operational responsibilities for carrying out functions authorized under any other section of this chapter or under any other provision of law designed to benefit handicapped individuals.

(d) Authorization of appropriations.

There are authorized to be appropriated for carrying out this section $500,000 each for the fiscal years ending June 30, 1974, and June 30, 1975, and $600,000 for the fiscal year ending June 30, 1976.

(e) Funds, availability; notification of Congressional committees.

Not later than thirty days after the appropriation Act containing sums for carrying out the provisions of this chapter is enacted for each fiscal year, the Secretary shall set aside out of sums available to carry out this section or otherwise available pursuant to any other Act, an amount which he determines is necessary and appropriate to enable him to carry out the provisions of this section and shall notify the appropriate committees of the Congress of the amount so set aside, the number of personnel necessary for such purpose, and the basis for his determination under this subsection and his reasons therefor. (Pub. L. 93–112, title IV, § 405, Sept. 26, 1973, 87 Stat. 338, amended Pub. L. 93–516, title I, §§ 109, 111(m), Dec. 7, 1974, 88 Stat. 1619, 1621.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–516, § 111(m) (1), (2), substituted "Office for Handicapped Individuals" for "Office for the Handicapped", and added provisions relating to the nondelegability of functions under this section.

Subsec. (d). Pub. L. 93–516, § 109, authorized appropriation of $600,000 for fiscal year ending June 30, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 1904.

§ 786. Sheltered workshop study.

(a) Original study; wage payments; guidelines.

The Secretary shall conduct an original study of the role of sheltered workshops in the rehabilitation and employment of handicapped individuals, including a study of wage payments in sheltered workshops. The study shall incorporate guidelines which are consistent with criteria provided in resolutions adopted by the Committee on Labor and Public Welfare of the United States Senate or the Committee on Education and Labor of the United States House of Representatives, or both.

(b) Site visits; interviews; consultations.

The study shall include site visits to sheltered workshops, interviews with handicapped trainees or clients, and consultations with interested individuals and groups and State agencies designated pursuant to section 721 of this title.

(c) Conflict of interests.

Any contracts awarded for the purpose of carrying out all or part of this study shall not be made with individuals or groups with a financial or other direct interest in sheltered workshops.

(d) Report to Congress.

The Secretary shall report to the Congress his findings and recommendations with respect to such study within twenty-four months after September 26, 1973. (Pub. L. 93–112, title IV, § 406, Sept. 26, 1973, 87 Stat. 389.)

§ 787. State allocation study; report to Congress.

(a) The Secretary shall conduct a thorough study of the allotment of funds among the States for grants for basic vocational rehabilitation services authorized under part B of subchapter I of this chapter, including a consideration of—

(1) the needs of individuals requiring vocational rehabilitation services;

(2) the financial capability of the States to furnish vocational rehabilitation assistance including, on a State-by-State basis, per capita income, per capita costs of services rendered, State tax rates, and the ability and willingness of a State to provide the non-Federal share of the costs of rendering such services;

(3) the continuing demand upon the State to furnish vocational rehabilitation services, together with a consideration of the factor that no State would receive less Federal financial assistance under such part than it received under section 2 of the Vocational Rehabilitation Act in the fiscal year immediately prior to the enactment of this chapter.

(b) Not later than June 30, 1974, the Secretary shall report to the Congress his findings and recommendations, including recommendations for additional legislation, with respect to the study required by this section, which report shall include recommendations with respect to allotment of Federal funds among the States and the Federal share of the cost of furnishing vocational rehabilitation services by the States. (Pub. L. 93–112, title IV, § 407, Sept. 26, 1973, 87 Stat. 389.)

REFERENCES IN TEXT

Section 2 of Vocational Rehabilitation Act, referred to in subsec. (a)(3), refers to section 2 of act June 2, 1920, ch. 219, 41 Stat. 735, as amended, which provided for grants to States for vocational rehabilitation services, including computation of allotments, amount of payments, adjusted Federal shares, and private contributions for construction or establishment of facilities, and which was classified to section 32 of this title, was repealed by section 500(a) of Pub. L. 93–112, effective 90 days after Sept. 26, 1973, and is now covered by sections 724, 730, and 731 of this title. See section 790 of this title.

SUBCHAPTER V.—MISCELLANEOUS PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 702, 706 of this title.

§ 790. Existing law affected; references in other provisions; availability of unexpended appropriations; savings provision; extension of appropriations.

(a) The Vocational Rehabilitation Act is repealed ninety days after September 26, 1973, and references to such Vocational Rehabilitation Act in any other provision of law shall, ninety days after such date, be deemed to be references to the Rehabilitation Act of 1973. Unexpended appropriations for carrying out the Vocational Rehabilitation Act may be made available to carry out this chapter, as directed by the President. Approved State plans for vocational rehabilitation, approved projects, and contractual arrangements authorized under the Vocational Rehabilitation Act will be recognized under comparable provisions of this chapter so that there is no disruption of ongoing activities for which there is continuing authority.

(b) The authorizations of appropriations in the Vocational Rehabilitation Act are hereby extended at the level specified for the fiscal year 1972 for the

fiscal year 1973. (Pub. L. 93–112, title V, § 500, Sept. 26, 1973, 87 Stat. 390.)

REFERENCES IN TEXT

Vocational Rehabilitation Act, referred to in the text, refers to act June 2, 1920, ch. 219, 41 Stat. 735, as amended, which was classified to chapter 4 (sections 31 to 41c and 42–1 to 42b) of this title, was repealed by subsec. (a) of this section, and is now covered by this chapter.

Such Act was referred to in title 5 section 8104; title 20 section 107a; title 21 section 1173; title 22 section 2102; title 42 sections 303, 421, 422, 603, 1203, 1353, 1382d.

§ 791. Employment of handicapped individuals.

(a) Interagency Committee on Handicapped Employees; establishment; membership; co-chairmen; availability of other Committee resources; purpose and functions.

There is established within the Federal Government an Interagency Committee on Handicapped Employees (hereinafter in this section referred to as the "Committee"), comprised of such members as the President may select, including the following (or their designees whose positions are Executive Level IV or higher): the Chairman of the Civil Service Commission, the Administrator of Veterans' Affairs, and the Secretaries of Labor and Health, Education, and Welfare. The Secretary of Health, Education, and Welfare and the Chairman of the Civil Service Commission shall serve as co-chairmen of the Committee. The resources of the President's Committees on Employment of the Handicapped and on Mental Retardation shall be made fully available to the Committee. It shall be the purpose and function of the Committee (1) to provide a focus for Federal and other employment of handicapped individuals, and to review, on a periodic basis, in cooperation with the Civil Service Commission, the adequacy of hiring, placement, and advancement practices with respect to handicapped individuals, by each department, agency, and instrumentality in the executive branch of Government, and to insure that the special needs of such individuals are being met; and (2) to consult with the Civil Service Commission to assist the Commission to carry out its responsibilities under subsections (b), (c), and (d) of this section. On the basis of such review and consultation, the Committee shall periodically make to the Civil Service Commission such recommendations for legislative and administrative changes as it deems necessary or desirable. The Civil Service Commission shall timely transmit to the appropriate committees of Congress any such recommendations.

(b) Federal agencies; affirmative action program plans.

Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Civil Service Commission and to the Committee an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for handicapped individuals.

(c) State agencies; rehabilitated individuals, employment.

The Civil Service Commission, after consultation with the Committee, shall develop and recommend to the Secretary for referral to the appropriate State agencies, policies and procedures which will facilitate the hiring, placement, and advancement in employment of individuals who have received rehabilitation services under State vocational rehabilitation programs, veterans' programs, or any other program for handicapped individuals, including the promotion of job opportunities for such individuals. The Secretary shall encourage such State agencies to adopt and implement such policies and procedures.

(d) Report to Congressional committees.

The Civil Service Commission, after consultation with the Committee, shall, on June 30, 1974, and at the end of each subsequent fiscal year, make a complete report to the appropriate committees of the Congress with respect to the practices of and achievements in hiring, placement, and advancement of handicapped individuals by each department, agency, and instrumentality and the effectiveness of the affirmative action programs required by subsection (b) of this section, together with recommendations as to legislation which have been submitted to the Civil Service Commission under subsection (a) of this section, or other appropriate action to insure the adequacy of such practices. Such report shall also include an evaluation by the Committee of the effectiveness of the Civil Service Commission's activities under subsections (b) and (c) of this section.

(e) Federal work experience without pay; non-Federal status.

An individual who, as a part of his individualized written rehabilitation program under a State plan approved under this chapter, participates in a program of unpaid work experience in a Federal agency, shall not, by reason thereof, be considered to be a Federal employee or to be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(f) Federal agency cooperation; special consideration for positions on President's Committee on Employment of the Handicapped.

(1) The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized and directed to cooperate with the President's Committee on Employment of the Handicapped in carrying out its functions.

(2) In selecting personnel to fill all positions on the President's Committee on Employment of the Handicapped, special consideration shall be given to qualified handicapped individuals. (Pub. L. 93–112, title V, § 501, Sept. 26, 1973, 87 Stat. 390.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (a), is set out in section 5315 of Title 5, Government Organization and Employees.

PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

Establishment of President's Committee on Employment of the Handicapped, see Ex. Ord. No. 11480, Sept. 9, 1969, 34 F.R. 14273, set out under former section 38 of this title.

EX. ORD. NO. 11830. ENLARGING MEMBERSHIP OF INTERAGENCY COMMITTEE ON HANDICAPPED EMPLOYEES

Ex. Ord. No. 11830, Jan. 9, 1975, 40 F.R. 2411, provided: By virtue of the authority vested in me by section 501 (a) of the Rehabilitation Act of 1973 (Public Law 93–112; 87 Stat. 390) [subsec. (a) of this section], it is hereby ordered as follows:

SECTION 1. The Interagency Committee on Handicapped Employees shall be comprised of the following (or their designees whose positions are executive level IV or higher):

(1) The Secretary of Defense.
(2) The Secretary of Labor.
(3) The Secretary of Health, Education, and Welfare.
(4) The Chairman of the Civil Service Commission.
(5) The Administrator of Veterans Affairs.
(6) The Administrator of General Services.
(7) The Chairman of the Federal Communications Commission, and
(8) such other members as the President may, from time to time, designate.

SEC. 2. The Secretary of Health, Education, and Welfare and the Chairman of the Civil Service Commission, under the provisions of section 501(a) of the Rehabilitation Act of 1973 [subsec. (a) of this section], shall serve as Co-chairmen of the Committee.

GERALD R. FORD

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 2014.

§ 792. Architectural and Transportation Barriers Compliance Board.

(a) Establishment; membership; chairman; appointment of Consumer Advisory Panel.

There is established within the Federal Government the Architectural and Transportation Barriers Compliance Board (hereinafter referred to as the "Board") which shall be composed of the heads of each of the following departments or agencies (or their designees whose positions are Executive Level IV or higher):

(1) Department of Health, Education, and Welfare;
(2) Department of Transportation;
(3) Department of Housing and Urban Development;
(4) Department of Labor;
(5) Department of the Interior;
(6) Department of Defense;
(7) General Services Administration;
(8) United States Postal Service; and
(9) Veterans' Administration.

The Secretary of Health, Education, and Welfare shall be the Chairman of the Board, and the Board shall appoint, upon recommendation of the Secretary, a Consumer Advisory Panel, a majority of the members of which shall be handicapped individuals, to provide guidance, advice, and recommendations to the Board in carrying out its functions.

(b) Functions.

It shall be the function of the Board to: (1) insure compliance with the standards prescribed by the General Services Administration, the Department of Defense, and the Department of Housing and Urban Development pursuant to the Architectural Barriers Act of 1968, as amended by the Act of March 5, 1970; (2) investigate and examine alternative approaches to the architectural, transportation, and attitudinal barriers confronting handicapped individuals, particularly with respect to public buildings and monuments, parks and parklands, public transportation (including air, water, and surface transportation whether interstate, foreign, intrastate, or local), and residential and institutional housing; (3) determine what measures are being taken by Federal, State, and local governments and by other public or nonprofit agencies to eliminate the barriers described in clause (2) of this subsection; (4) promote the use of the International Accessibility Symbol in all public facilities that are in compliance with the standards prescribed by the Administrator of the General Services Administration, the Secretary of Defense, and the Secretary of Housing and Urban Development pursuant to the Architectural Barriers Act of 1968; (5) make to the President and to Congress reports which shall describe in detail the results to its investigations under clauses (2) and (3) of this subsection; and (6) make to the President and to the Congress such recommendations for legislation and administration as it deems necessary or desirable to eliminate the barriers described in clause (2) of this subsection.

(c) Additional functions; transportation barriers and housing needs; transportation and housing plans and proposals.

The Board shall also (1)(A) determine how and to what extent transportation barriers impede the mobility of handicapped individuals and aged handicapped individuals and consider ways in which travel expenses in connection with transportation to and from work for handicapped individuals can be met or subsidized when such individuals are unable to use mass transit systems or need special equipment in private transportation, and (B) consider the housing needs of handicapped individuals; (2) determine what measures are being taken, especially by public and other nonprofit agencies and groups having an interest in and a capacity to deal with such problems, (A) to eliminate barriers from public transportation systems (including vehicles used in such systems), and to prevent their incorporation in new or expanded transportation systems and (B) to make housing available and accessible to handicapped individuals or to meet sheltered housing needs; and (3) prepare plans and proposals for such further actions as may be necessary to the goals of adequate transportation and housing for handicapped individuals, including proposals for bringing together in a cooperative effort, agencies, organizations, and groups already working toward such goals or whose cooperation is essential to effective and comprehensive action.

(d) Investigations; hearings; orders; administrative procedure applicable; final orders.

In carrying out its functions under this chapter, the Board shall, directly or through grants to or contracts with public or private nonprofit organizations, carry out its functions under subsections (b)

and (c) of this section, and shall conduct investigations, hold public hearings, and issue such orders as it deems necessary to insure compliance with the provisions of the Acts cited in subsection (b) of this section. The provisions of subchapter II of chapter 5, and chapter 7 of Title 5 shall apply to procedures under this section, and an order of compliance issued by the Board shall be a final order for purposes of judicial review. Any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality. An order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with standards prescribed pursuant to the Acts cited in subsection (b) of this section.

(e) Appointment of executive director, hearing examiners, and other personnel; provisions applicable.

There shall be appointed by the Board an executive director and such other professional and clerical personnel as are necessary to carry out its functions under this chapter. The Board is authorized to appoint as many hearing examiners as are necessary for proceedings required to be conducted under this section. The provisions applicable to hearing examiners appointed under section 3105 of Title 5 shall apply to hearing examiners appointed under this subsection.

(f) Technical, administrative, or other assistance; appointment, compensation, and travel expenses of advisory and technical experts and consultants.

The departments or agencies specified in subsection (a) of this section shall make available to the Board such technical, administrative, or other assistance as it may require to carry out its functions under this section, and the Board may appoint such other advisers, technical experts, and consultants as it deems necessary to assist it in carrying out its functions under this section. Special advisory and technical experts and consultants appointed pursuant to this subsection shall, while performing their functions under this section, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the daily pay rate, for a person employed as a GS–18 under section 5332 of Title 5, including traveltime, and while serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such Title 5 for persons in the Government service employed intermittently.

(g) Reports to Congress; final reports on transportation barriers and housing needs.

The Board shall, at the end of each fiscal year, report its activities during the preceding fiscal year to the Congress. Such report shall include an assessment of the extent of compliance with the Acts cited in subsection (b) of this section, along with a description and analysis of investigations made and actions taken by the Board, and the reports and recommendations described in clauses (5) and (6) of subsection (b) of this section. The Board shall prepare two final reports of its activities under subsection (c) of this section. One such report shall be on its activities in the field of transporation barriers to handicapped individuals, and the other such report shall be on its activities in the field of the housing needs of handicapped individuals. The Board shall, not later than September 30, 1975, submit each such report, together with its recommendations, to the President and the Congress. The Board shall also prepare for such submission an interim report of its activities in each such field within 18 months after September 26, 1973.

(h) Authorization of appropriations.

There are authorized to be appropriated for the purpose of carrying out the duties and functions of the Board under this section $1,000,000 each for the fiscal years ending June 30, 1974, and June 30, 1975, and $1,500,000 for the fiscal year ending June 30, 1976. (Pub. L. 93–112, title V, § 502, Sept. 26, 1973, 87 Stat. 391, amended Pub. L. 93–516, title I, §§ 110, 111(n)–(q), Dec. 7, 1974, 88 Stat. 1619, 1621, 1622.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (a), is set out in section 5315 of Title 5, Government Organization and Employees.

Architectural Barriers Act of 1968, as amended, referred to in subsec. (b), is classified to chapter 51 (section 4151 et seq.) of Title 42, The Public Health and Welfare.

CODIFICATION

Section 5332 of Title 5, referred to in subsec. (f), read Title "45" in the original and was changed to reflect the Congressional intent made manifest in the subsequent text reading "such Title 5".

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–516, § 111(n), redesignated cls. (6), (7), and (8), as cls. (7), (8), and (9), added cl. (6), and following the designated clauses, added provisions that the Secretary of Health, Education, and Welfare shall be the Chairman of the Board, and that the Board shall appoint, upon recommendation of the Secretary, a Consumer Advisory Panel, a majority of the members of which shall be handicapped individuals, to provide guidance, advice, and recommendations to the Board in carrying out its functions.

Subsec. (d). Pub. L. 93–516, § 111(o), substituted "this chapter, the Board shall, directly or through grants to or contracts with public or private nonprofit organizations, carry out its functions under subsections (b) and (c) of this section, and shall conduct" for "this section, the Board shall conduct", and added provisions that any such order affecting any Federal department, agency, or instrumentality of the United States shall be final and binding on such department, agency, or instrumentality, and that an order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with standards prescribed pursuant to the Acts referred to in subsec. (b) of this section.

Subsec. (e). Pub. L. 93–516, § 111(p), added provisions relating to the appointment of an executive director and other professional and clerical personnel.

Subsec. (g). Pub. L. 93–516, § 111(q), substituted "not later than September 30, 1975" for "prior to January 1, 1975".

Subsec. (h). Pub. L. 93–516, § 110, authorized appropriation of $1,500,000 for fiscal year ending June 30, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 774, 776 of this title.

§ 793. Employment under Federal contracts.

(a) Amount of contracts or subcontracts; provision for employment and advancement of qualified handicapped individuals; regulations.

Any contract in excess of $2,500 entered into by any Federal department or agency for the procure-

ment of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that, in employing persons to carry out such contract the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals as defined in section 706(6) of this title. The provisions of this section shall apply to any subcontract in excess of $2,500 entered into by a prime contractor in carrying out any contract for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within ninety days after September 26, 1973.

(b) Administrative enforcement; complaints; investigations; departmental action.

If any handicapped individual believes any contractor has failed or refuses to comply with the provisions of his contract with the United States, relating to employment of handicapped individuals, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.

(c) Waiver by President; national interest special circumstances for waiver of particular agreements.

The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which he shall prescribe, when he determines that special circumstances in the national interest so require and states in writing his reasons for such determination. (Pub. L. 93–112, title V, § 503, Sept. 26, 1973, 87 Stat. 393.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 721 of this title.

§ 794. Nondiscrimination under Federal grants.

No otherwise qualified handicapped individual in the United States, as defined in section 706(6) of this title, shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. (Pub. L. 93–112, title V, § 504, Sept. 26, 1973, 87 Stat. 394.)

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SUBCHAPTER VII.—GENERAL PROVISIONS

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 665; title 42 sections 2982a, 3056a, 6103.

§ 801. Congressional statement of purpose.

It is the purpose of this chapter to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible and decentralized system of Federal, State, and local programs. (Pub. L. 93–203, § 2, Dec. 28, 1973, 87 Stat. 839.)

EFFECTIVE DATE

Section 715, formerly § 615 of Pub. L. 93–203, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, provided that: "This Act [this chapter] shall take effect on the date of its enactment [Dec. 28, 1973]."

SHORT TITLE

Section 1 of Pub. L. 93–203 provided: "That this Act [which enacted this chapter and repealed sections 2571 to 2628, 2711 to 2729, 2731 to 2749, and 2769 to 2769f of Title 42] may be cited as the 'Comprehensive Employment and Training Act of 1973'."

TRANSITIONAL PROVISIONS

Section 3 of Pub. L. 93–203 provided that:

"(a) To the extent necessary to provide for the orderly transition of supporting job training programs, and to provide continued financial assistance for such programs, prior to July 1, 1974, the Secretary is authorized to provide financial assistance in the same manner and on the same conditions as provided in the Manpower Development and Training Act of 1962 [sections 2571 to 2628 of Title 42, The Public Health and Welfare], as in effect prior to June 30, 1973, title I of the Economic Opportunity Act of 1964 [section 2711 et seq. of Title 42], and the Emergency Employment Act of 1971 [section 4871 et seq. of Title 42], as in effect prior to June 30, 1973, from funds appropriated pursuant to this Act [this chapter].

"(b) The authority contained in this section shall not be construed to postpone or impede the prompt designation of prime sponsors and the implementation of other provisions of this Act [this chapter].

"(c) Notwithstanding any other provision of this Act [this chapter] other than the provisions of section 4(d)(1) [section 802(d)(1) of this title], the Secretary is authorized from appropriations available under this Act [this chapter] for fiscal year 1974 to provide financial assistance for the program described in section 304(a)(3) [section 874(a)(3) of this title] during the period June 1, 1974, through October 1, 1974, in the same manner and on the same conditions as provided pursuant to the Manpower Development and Training Act of 1962 [section 2571 et seq. of Title 42], as in effect prior to June 30, 1973, and title I of the Economic Opportunity Act of 1964 [section 2711 et seq. of Title 42], as in effect prior to repeal by this Act."

AVAILABILITY OF UNEXPENDED APPROPRIATIONS FROM PREDECESSOR PROGRAMS

Section 714, formerly § 614 of Pub. L. 93–203, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845, provided in part that: "Unexpended appropriations for carrying out such Acts [Manpower Development and Training Act of 1962, sections 2571 to 2628 of Title 42, The Public Health and Welfare, and parts A, B, and E of title I of the Economic Opportunity Act of 1964, sections 2711 to 2729, 2731 to 2749, and 2769 to 2769a of Title 42] may be made available to carry out this Act [this chapter], as directed by the President."

§ 802. Authorization of appropriations.

(a) There are authorized to be appropriated such sums as may be necessary for the fiscal year ending June 30, 1974, and for each of the three succeeding fiscal years for carrying out the provisions of this chapter.

(b) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds appropriated to carry out this chapter which are not obligated prior to the end of the fiscal year for which such funds were appropriated shall remain available for obligation during the succeeding fiscal year, and any funds obligated in any fiscal year may be expended during a period of two years from the date of obligation.

(c)(1) For the purpose of affording adequate notice of funding available under this chapter, appropriations under this chapter are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(2) In order to effect a transition to the advance funding method of timing appropriation action, the provisions of this subsection shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(d)(1) Of the amounts appropriated to carry out this chapter, the Secretary shall reserve and make available not less than $250,000,000 in the fiscal year ending June 30, 1974, and not less than $350,000,000 in the fiscal year ending June 30, 1975, to carry out public service employment programs under subchapter II of this chapter.

(2) In addition to the amounts reserved under paragraph (1) of this subsection, there are authorized to be appropriated and made available for the fiscal years ending June 30, 1974, and June 30, 1975, such sums as may be necessary to carry out public service employment programs under subchapter II of this chapter. There are authorized to be appropriated and made available for the fiscal year ending June 30, 1976, and for the succeeding fiscal year such sums as may be necessary to carry out public service employment programs under subchapter II of this chapter.

(e) Of the amount appropriated to carry out this chapter for any fiscal year, not more than 20 percent of such amount (excluding any amount in excess of $250,000,000 of the amount made available for carrying out subchapter II of this chapter) shall be available for carrying out the provisions of subchapter III and subchapter IV of this chapter. (Pub. L. 93–203, § 4, Dec. 28, 1973, 87 Stat. 839.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 882 of this title.

SUBCHAPTER I.—COMPREHENSIVE MANPOWER SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 850, 871, 874, 917, 962, 963, 981 of this title; title 42 section 2809.

§ 811. Program description.

It is the purpose of this subchapter to establish a program to provide comprehensive manpower services throughout the Nation. Such program shall include the development and creation of job opportunities and the training, education, and other services needed to enable individuals to secure and retain employment at their maximum capacity. Comprehensive manpower services may include, but shall not be limited to, programs and activities designed to carry out the purpose of this subchapter, such as—

(1) outreach to make persons aware of the availability of manpower services and persuade them to use such services,

(2) assessment of the individual's needs, interests, and potential in the labor market and referral to appropriate employment, training, or other opportunities,

(3) orientation, counseling, education, and institutional skill training to prepare the individual to enter the labor market or to qualify for more productive job opportunities,

(4) training on the job,

(5) payments or other inducements to public or private employers to expand job opportunities, but payments to employers organized for profit shall not exceed the difference between the costs of recruiting, training, and providing supportive services for low-income persons and those regularly employed,

(6) services to individuals to enable them to retain employment,

(7) payment of allowances to persons in training for which they receive no remuneration and payment of such allowances for transportation, subsistence, or other expenses incurred in participating in manpower services or employment as are necessary to enable the individual to participate therein,

(8) supportive services to enable individuals to take advantage of employment opportunities, including necessary health care and medical services, child care, residential support, assistance in securing bonds, or any other necessary assistance incident to employment, and any other service needed to participate in employment or manpower services,

(9) development of information concerning the labor market and activities, such as job restructuring, to make it more responsive to objectives of the manpower services program,

(10) manpower training, employment opportunities, and related services conducted by community-based organizations,

(11) transitional public service employment programs, and

(12) any programs authorized by part A of subchapter III of this chapter and by subchapter IV of this chapter.

(Pub. L. 93–203, title I, § 101, Dec. 28, 1973, 87 Stat. 840.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 983 of this title.

§ 812. Prime sponsors.

(a) The Secretary may make financial assistance available to a prime sponsor to enable it to carry out all or a substantial part of a comprehensive manpower program. A prime sponsor shall be—

(1) a State;

(2) a unit of general local government which has a population of one hundred thousand or more persons on the basis of the most satisfactory current data available to the Secretary;

(3) any combination of units of general local government which includes any unit of general local government qualifying under paragraph (2) of this subsection;

(4) any unit of general local government or any combination of such units, without regard to population, which, in exceptional circumstances, is determined by the Secretary of Labor—

(A) (i) to serve a substantial portion of a functioning labor market area, or (ii) to be a rural area having a high level of unemployment; and

(B) to have demonstrated (i) that it has the capability for adequately carrying out programs under this chapter, and (ii) that there is a special need for services within the area to be served, and (iii) that it will carry out such programs and services in such area as effectively as the State; or

(5) a limited number of existing concentrated employment program grantees serving rural areas having a high level of unemployment which the Secretary determines have demonstrated special capabilities for carrying out programs in such areas and are designated by him for that purpose.

(b) (1) A State shall not qualify as a prime sponsor for any geographical area within the jurisdiction of any prime sponsor described in paragraph (2), (3), (4), or (5) of subsection (a) of this section unless such prime sponsor has not submitted an approvable comprehensive manpower plan for such area.

(2) A unit of general local government shall not qualify as a prime sponsor with respect to any area within the jurisdiction of another eligible unit of general local government unless such smaller unit has not submitted an approvable comprehensive manpower plan for such area.

(c) (1) To be eligible for prime sponsorship for any fiscal year, an otherwise eligible applicant must submit to the Secretary a notice of intent to apply for prime sponsorship by such date as the Secretary shall prescribe.

(2) The Secretary may not, prior to March 1, 1974, designate as a prime sponsor, any State or unit of general local government containing another unit of general local government meeting the requirements of subsection (a)(2) of this section unless such smaller unit has submitted to the Secretary written consent for such designation. (Pub. L. 93–203, title I, § 102, Dec. 28, 1973, 87 Stat. 841.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 813, 816, 817, 820, 844, 963, 964 of this title.

§ 813. Allocation of funds.

(a) Percentage of allotments.

(1) Eighty percent of the amount available for this subchapter in any fiscal year shall be allotted in accordance with the provisions of this subsection.

(2) Subject to the provisions of paragraph (4)—

(A) 50 percent of the amount allotted under this subsection shall be allotted on the basis of the manpower allotment of the State in the fiscal year prior to the year for which the determination is made compared to the manpower allotment for all States in that year;

(B) 37½ percent of the amount allotted under this subsection shall be allotted on the basis of the relative number of unemployed persons within the State as compared to such numbers in all States;

(C) 12½ percent of the amount allotted under this subsection shall be allotted on the basis of the relative number of adults in families with an annual income below the low-income level within the State compared to such total numbers in all States;

(D) Not less than $2,000,000 shall be allotted among Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, in accordance with their respective needs.

(3) The sum allotted to each State shall be allotted by the Secretary among areas within the State on an equitable basis based upon the factors set forth in paragraph (2).

(4) No prime sponsor shall be allocated an amount which is in excess of 150 percent of the amount received by the area served by that prime sponsor in the fiscal year immediately preceding the fiscal year for which the determination was made except that if the amount so allocated is less than 50 percent of the amount to which such prime sponsor is entitled under paragraph (2) in the fiscal year for which a determination was made, then such allocation shall be increased to 50 percent of the amount of such entitlement.

(b) Encouragement of voluntary combinations.

Not more than 5 percent of the amount available for this subchapter shall be available to the Secretary to encourage, after consultation with and receiving recommendations from the Governor of the appropriate State, voluntary combinations formed under section 812(a)(3) of this title.

(c) Grants for supplemental vocational education assistance.

Five percent of the funds available under this subchapter shall be available only for grants under section 822 of this title except that such grants shall not increase the funds available in any prime sponsor's area by more than 20 percent of the amount allocated to such prime sponsor under subsection (a) of this section.

(d) Allocation to State prime sponsors for costs in staffing and servicing State Manpower Service Councils.

One percent of the amount allocated under subsection (a) of this section shall be available to the Secretary to be allocated in the same manner as provided under subsection (a) of this section to State prime sponsors for the costs incurred in carrying out the provisions of section 817(a)(2)(B) of this title. If any State does not need the amount allocated under this subsection for any fiscal year, that amount shall be available for State services under section 816 of this title.

(e) Allocation for State services under special provisions relating to State prime sponsors.

Four percent of the amounts available for this subchapter shall be available to each State in the same proportion as that State's allocation under subsection (a) of this section for State services under section 816 of this title.

(f) Discretion of Secretary.

The remainder of the funds shall be available in the Secretary's discretion. In exercising his discretion the Secretary shall first utilize such funds to provide each prime sponsor with an amount for any fiscal year equal to 90 percent of such area's manpower allotment in the preceding fiscal year. The remainder shall be distributed in the Secretary's discretion among areas served by prime sponsors (or where a prime sponsor's plan has not been approved, an area served by the Secretary under his authority in section 820 of this title). In exercising his discretion the Secretary shall take into account the need for continued funding of programs of demonstrated effectiveness.

(g) Source of funds for grants to prime sponsors serving rural areas having a high level of unemployment.

Grants made to prime sponsors designated under section 812(a)(5) of this title shall be from funds not allocated under subsection (a) of this section.

(h) Publication in Federal Register.

As soon as practicable after funds are appropriated to carry out this chapter for any fiscal year, the Secretary shall publish in the Federal Register the allotments made pursuant to this section. Allotments under this section shall be based on the latest satisfactory data and estimates available.

(i) Reallocations.

The Secretary is authorized to make such reallocations under this subchapter as he deems appropriate of the unobligated amount of any allotment pursuant to subsection (a) of this section to the extent that the Secretary determines that it will not be required for the period for which such allotment is

available. Allotted amounts may not be reallocated for any reason before the expiration of the ninth month of the fiscal year for which such funds were allotted and thereafter may be reallocated only if the Secretary has provided thirty days' advance notice to the prime sponsor for such area and to the Governor of the State of the proposed reallocation, during which period of time the prime sponsor and the Governor may submit comments to the Secretary. After considering any comments submitted during such period of time, the Secretary shall notify the Governor and affected prime sponsors of any decision to reallocate funds and shall publish any such decision in the Federal Register. Priority shall be given in reallocating such funds to other areas within the same State. (Pub. L. 93–203, title I, § 103, Dec. 28, 1973, 87 Stat. 842.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 820, 822, 872, 873, 981 of this title.

§ 814. Prime sponsor's planning councils.

Each prime sponsor designated under this subchapter shall establish a planning council consisting, to the extent practical, of members who are representative of the client community and of community-based organizations, the employment service, education and training agencies and institutions, business, labor, and, where appropriate, agriculture. The prime sponsor shall appoint the members of the council, designate the chairman, and provide professional, technical, and clerical staff to serve the council. It is the function of the council to submit recommendations regarding program plans and basic goals, policies, and procedures, to monitor and provide for objective evaluations of employment and training programs conducted in the prime sponsorship area, and to provide for continuing analyses of needs for employment, training, and related services in such area. Any final decision with respect to such recommendations shall be made by the prime sponsor. (Pub. L. 93–203, title I, § 104, Dec. 28, 1973, 87 Stat. 843.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 815. Conditions for receipt of financial assistance.

(a) The Secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless such sponsor submits a comprehensive manpower plan, in such detail as the Secretary deems necessary, which—

(1) sets forth a comprehensive manpower program which meets the objectives of this subchapter, including (A) a description of the services to be provided, and performance goals, (B) assurance that such services will be administered by or under the supervision of the prime sponsor, (C) a description of the geographical areas to be served under the plan, and (D) assurances that to the maximum extent feasible manpower services, including the development of job opportunities, will be provided to those most in need of them, including low-income persons and persons of limited English-speaking ability, and that the need for continued funding of programs of demonstrated effectiveness is taken into account in serving such groups and persons;

(2) provides, in the case of prime sponsors who are recipients of funds under subchapter II of this chapter for the development of a public service employment program, that it is fully integrated with the services under this subchapter in order to assure that persons employed in such a program are afforded a better opportunity to find regular employment not supported under this chapter;

(3) (A) provides appropriate arrangements with community-based organizations serving the poverty community, and other special target groups for their participation in the planning of programs included in the plan; (B) provides for utilizing those services and facilities which are available, with or without reimbursement of the reasonable cost, from Federal, State, and local agencies to the extent deemed appropriate by the prime sponsor, after giving due consideration to the effectiveness of such existing services and facilities, including, but not limited to, the State employment service, State vocational education and vocational rehabilitation agencies, area skills centers, local educational agencies, postsecondary training and education institutions, and community action agencies, but nothing contained herein shall be construed to limit the utilization of services and facilities of private agencies, institutions and organizations (such as private businesses, labor organizations, private employment agencies, and private educational and vocational institutions) which can, at comparable cost, provide substantially equivalent training or services or otherwise aid in reducing more quickly unemployment or current and prospective manpower shortages; (C) provides that in making arrangements for institutional training priority shall be given (to the extent feasible) to the use of skills centers established under the authority of section 2601 of Title 42; (D) provides arrangements to the extent feasible for the coordination of services for which financial assistance is provided under programs administered by the Secretary of Labor relating to manpower and manpower-related services;

(4) provides for paying the allowances and compensation provided by section 821 of this title;

(5) provides that any transitional public service employment programs meet the requirements of section 845(c) and section 848 of this title, and that persons hired to fill jobs created by such programs will be residents of the areas described under paragraph (1)(C) of this subsection;

(6) provides assurances that programs of institutional training be designed for occupations in which skill shortages exist and assurances that such programs and training on the job shall, wherever possible, result in employment which provides economic self-sufficiency;

(7) contains such other information, assurances, statements, and arrangements consistent with the provisions of this chapter as the Secretary shall prescribe by regulation including provisions de-

signed to assist the Secretary in carrying out his special responsibilities under this section and section 818 of this title.

(b) The Secretary shall not provide financial assistance for any fiscal year to a prime sponsor unless such sponsor certifies that—

(1) its plan meets all the requirements of this section; and

(2) it will comply with all provisions of this chapter.

(c) The Secretary shall provide financial assistance to each prime sponsor under this subchapter to carry out the plan submitted by each such prime sponsor upon determining that—

(1) the plan is consistent with the provisions of this subchapter;

(2) the plan was made public prior to submission to the Secretary;

(3) the prime sponsor has demonstrated maximum efforts to implement the provisions in the prior year's plan.

(Pub. L. 93–203, title I, § 105, Dec. 28, 1973, 87 Stat. 843.)

REFERENCES IN TEXT

Section 2601 of Title 42, referred to in subsec. (a)(3)(C), was repealed by Pub. L. 93–203, effective with respect to fiscal years after June 30, 1974. The provisions of the Manpower Development and Training Act of 1962, of which section 2601 of Title 42 was one section, are now covered by this chapter.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 818, 819, 872 of this title.

§ 816. Special provisions relating to State prime sponsors.

(a) State comprehensive manpower plan.

Any State seeking assistance under this chapter shall submit a State comprehensive manpower plan to the Secretary for approval in accordance with the requirements of this section.

(b) Requisite provisions of State comprehensive manpower plan.

The State comprehensive manpower plan shall in addition to meeting the requirements of section 815 of this title—

(1) provide satisfactory arrangements for serving all geographical areas under its jurisdiction except areas served by an eligible applicant who has filed a notice of intent under section 812(c) of this title, except that such plan may be amended to include areas served by an eligible applicant whose plan is finally disapproved without prejudice to the remedies available to such eligible applicant under section 819 of this title;

(2) provide for the cooperation and participation of all State agencies providing manpower and manpower-related services in the implementation of comprehensive manpower services plans by prime sponsors in accordance with the provisions of this chapter;

(3) set forth an overall State plan for the development and sharing of resources and facilities needed to conduct manpower programs under its direct sponsorship without unnecessary duplication and otherwise in the most efficient and economical manner;

(4) provide for the coordination of programs financed under the Wagner-Peyser Act in accordance with such rules, regulations, and guidelines as the Secretary determines necessary for the purpose of providing coordinated and comprehensive assistance to those individuals requiring manpower and manpower-related services to achieve their full occupational potential in accordance with the policies of this chapter;

(5) set forth arrangements for assisting the Secretary in carrying out his responsibilities for enforcing the requirement for Federal contractors and subcontractors to list all suitable employment openings with local offices of the State employment service and provide special emphasis, as required in section 2012(a) of Title 38;

(6) set forth arrangements, if any, which the State may desire to provide for planning areas to serve geographical regions within the State; and

(7) make adequate provision for the coordination of the manpower and related services to be provided by the State in areas to be served by prime sponsors other than the State, and that provision has been made for the establishment of mechanisms to (A) provide for the exchange of information between States and local governments on State, intrastate, and regional planning in areas such as economic development, human resource development, education, and such other areas that may be relevant to manpower planning; and (B) promote the coordination of all manpower plans in a State so as to eliminate conflict, duplication, and overlapping between manpower services:

(c) Use of available funds.

Funds available to each State under section 813(e) of this title may be used for—

(1) the provision of services under this chapter throughout the State by State agencies responsible for employment and training and related services;

(2) providing financial assistance for special programs and services designed to meet the needs of rural areas outside major labor market areas;

(3) developing and publishing information regarding economic, industrial, and labor market conditions, including but not limited to job opportunities and skill requirements, labor supply in various skills, occupational outlook and employment trends in various occupations, and economic and business development and location trends;

(4) providing, without reimbursement and upon request, to any prime sponsor serving an area within the State, such information and technical assistance as may be appropriate to assist any such prime sponsor in developing and implementing its programs under this chapter; and

(5) carrying out special model training and employment programs and related services, including programs for offenders similar to programs described in section 871(c) of this title.

(d) Annual compliance certification.

The State prime sponsor shall annually certify compliance with all the requirements for State prime sponsors. (Pub. L. 93–203, title I, § 106, Dec. 28, 1973, 87 Stat. 845.)

REFERENCES IN TEXT

The Wagner-Peyser Act, referred to in subsec. (b)(4), is act June 6, 1933, ch. 49, 48 Stat. 113, which is classified to section 49 et seq. of this title.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 813, 818, 819 of this title.

§ 817. State Manpower Services Council.

(a) (1) Any state which desires to be designated as a prime sponsor and to enter into arrangements with the Secretary under this subchapter shall establish a Manpower Services Council (hereinafter referred to as the "Council") which shall exercise the powers and duties set forth in this section.

(2) The Council established pursuant to paragraph (1) shall—

(A) be appointed by the Governor (who shall designate one member thereof to be Chairman), and shall be composed of—

(i) representatives of the units or combinations of units of general local government in such State, who shall comprise at least one-third of the membership of the Council, which have comprehensive manpower plans approved under section 818 of this title (except that the initial appointments to the Council may consist of representatives of units or combinations of units of general local government described in clauses (2), (3), (4), and (5) of section 812(a) of this title which have indicated an intention to submit a plan for approval under section 818 of this title), and such representatives shall be designated by the chief executive officers of the units or combination of units of general local government which qualify for representation under this section in accordance with procedures agreed upon by such chief executive officers;

(ii) one representative each of the State board of vocational education and the public employment service of such State;

(iii) one representative of each such other State agency as the Governor may determine to have a direct interest in overall manpower training and utilization within the State;

(iv) representatives of organized labor;

(v) representatives of business and industry;

(vi) representatives of community-based organizations and of the client community to be served under this chapter (including, where persons of limited English-speaking ability represent a substantial portion of the client population, appropriate representation of such persons); and

(vii) representatives of the general public.

(B) be appropriately staffed and serviced by the State prime sponsor;

(C) meet at such times and in such places as it deems necessary.

(b) The Council shall—

(1) review the plans of each prime sponsor and the plans of State agencies for the provision of services to such prime sponsors, and make recommendations to such prime sponsors and agencies for the more effective coordination of efforts to meet the overall manpower needs of the State;

(2) continuously monitor the operation of programs conducted by each prime sponsor, and the availability, responsiveness, and adequacy of State services, and make recommendations to the prime sponsors, to agencies providing manpower services, and to the Governor and the general public with respect to ways to improve the effectiveness of such programs or services in fulfilling the purposes of this chapter;

(3) make an annual report to the Governor which shall be a public document, and issue such other studies, reports, or documents as it deems advisable to assist prime sponsors or to otherwise help carry out the purposes of this chapter.

(Pub. L. 93–203, title I, § 107, Dec. 28, 1973, 87 Stat. 846.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 813 of this title.

§ 818. Review of comprehensive manpower plans.

(a) Approval by Secretary of Labor.

The Secretary shall not approve a comprehensive manpower plan or any amendment thereto until he determines that it meets the requirements of section 815 of this title, and in the case of a State plan section 816 of this title, and that the plan was submitted to, and an opportunity to comment thereon provided, the Governor of the State and appropriate officials in units of general local government of the area to be served.

(b) Hearing.

(1) The Secretary shall not finally disapprove any comprehensive manpower plan submitted under this subchapter, or any modifications thereof, without first affording the prime sponsor submitting the plan reasonable notice and opportunity for a hearing.

(2) If the Secretary receives a formal allegation from an affected unit of general local government that a prime sponsor has changed its comprehensive manpower plan so that it no longer complies with section 815 of this title or that in the administration of the plan there is a failure to comply substantially with any such provision, with any provision of the plan, or with any requirements of section 983 or 984 of this title, he shall, and, if he receives such an allegation from any other interested person, he may, or, if such allegation is supported by substantial evidence, he shall, after due notice and opportunity for a hearing to the prime sponsor, determine whether the allegation is true. If he determines such an allegation to be true, the Secretary shall notify the prime sponsor that no further payments will be made to the prime sponsor under the plan (or, in his discretion, that further payments will be limited to programs under or portions of the plan not affected by such failure), until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, the Secretary shall make no further payments to such sponsor under the plan (or shall limit payments to programs under the plan not affected by the failure).

(c) Percentage of funds devoted to particular programs.

The Secretary shall not disapprove any plan solely because of the percentage of funds devoted to a particular program or activity authorized under section 811 of this title.

(d) Revocation of plan.

Whenever the Secretary determines, after notice and opportunity for a public hearing, that any prime sponsor designated to serve under this chapter is—

(1) maintaining a pattern or practice of discrimination in violation of section 983(1) or section 991(a) of this title or otherwise failing to serve equitably the economically disadvantaged, unemployed or underemployed persons in the area it serves;

(2) incurring unreasonable administrative costs in the conduct of activities and programs, as determined pursuant to regulation;

(3) failing to give due consideration to continued funding of programs of demonstrated effectiveness including those previously conducted under provisions of the Manpower Development and Training Act of 1962 and parts A, B, and E of title I of the Economic Opportunity Act of 1964; or

(4) otherwise materially failing to carry out the purposes and provisions of this chapter;

the Secretary shall revoke the prime sponsor's plan for the area, in whole or in part, and to the extent necessary and appropriate shall not make any further payments to such prime sponsor under this chapter, and he shall notify such sponsor to return to him all or part of the unexpended sums paid under this chapter during that fiscal year. (Pub. L. 93–203, title I, § 108, Dec. 28, 1973, 87 Stat. 847, amended Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

REFERENCES IN TEXT

The Manpower Development and Training Act of 1962, referred to in subsec. (d)(3), is Pub. L. 87–415, which was classified to section 2571 et seq. of Title 42, The Public Health and Welfare, was repealed by section 614 of Pub. L. 93–203.

Parts A, B, and E of title I of the Economic Opportunity Act of 1964, referred to in subsec. (d)(3), are parts A, B, and E of title I of Pub. L. 88–452, which were classified, respectively, to sections 2711 et seq., 2731 et seq., and 2769 et seq. of Title 42, and were repealed by section 614 of Pub. L. 93–203.

AMENDMENTS

1974—Subsec. (b)(2). Pub. L. 93–567 substituted "section 703 or 704" for "section 603 or 604" which for purposes of codification has been translated as "section 983 or 984."

Subsec. (d)(1). Pub. L. 93–567 substituted "section 703(1) or section 711(a)" for "section 603(1) or section 611(a)" which for purposes of codification has been translated as "section 983(1) or section 991(a)."

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 817, 819, 820 of this title.

§ 819. Judicial review.

(a) United States Court of Appeals.

If any prime sponsor is dissatisfied with the Secretary's final action with respect to the approval of its comprehensive manpower plan submitted under section 815 or section 816 of this title or with his final action under section 818 of this title, such prime sponsor may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which the prime sponsor is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. Thereupon the Secretary shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of Title 28.

(b) Findings of fact.

The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Further review by United States Supreme Court.

The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28. (Pub. L. 93–203, title I, § 109, Dec. 28, 1973, 87 Stat. 848.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 816 of this title.

§ 820. Authority of Secretary to provide services.

(a) In any area of a State which has not qualified as a prime sponsor and for which no other prime sponsor has qualified under paragraph (2), (3), (4), or (5) of section 812(a) of this title or where the Secretary has taken an action under subsection (b)(2) or (d) of section 818 of this title which results in such services not being provided in such area, the Secretary is authorized and directed out of funds allotted to such State or local area under section 813(a) of this title to provide for continuing programs by making payments directly to public and private nonprofit agencies and organizations conducting activities which he determines are not in violation of the requrements of ths section. To the extent necessary to assure the delivery of services in the areas served by any prime sponsor subject to the provisions of this section, the Secretary is authorized (if no other eligible prime sponsor is designated under section 812 of this title to serve such area) to make grants to and enter into contracts with public and private nonprofit agencies and organizations in the same manner and to the same extent as if the Secretary were the prime sponsor for that area.

(b) The Secretary shall, prior to making any payments under this chapter for any fiscal year, enter into an agreement with any prime sponsor receiving payments under this chapter which contains provisions adequate to assure that the provisions of this

section are carried out effectively. (Pub. L. 93–203, title I, § 110, Dec. 28, 1973, 37 Stat. 848.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 813, 883 of this title.

§ 821. Allowances.

(a) Basic weekly allowances for individuals receiving training or education under this subchapter for which no wages are payable shall be at a rate prescribed by the Secretary which when added to amounts received by the trainee in the form of unemployment compensation payments shall equal the minimum wage for a work week of forty hours under section 206(a)(1) of this title or, if higher, under the applicable State or local minimum wage law, and such basic allowances shall, in the case of an individual with dependents, be increased by $5 a week for each dependent over two up to a maximum of four additional dependents. The prime sponsor may waive the payment of all or part of the allowances when it determines, under regulations prescribed by the Secretary, that such waiver will promote the purposes of this chapter. Trainees receiving public assistance or whose needs or income are taken into account in determining such public assistance payments to others, shall receive an incentive allowance of $30 per week. Such allowance shall be disregarded in determining the amount of public assistance payments under Federal or Federally assisted public assistance programs. In prescribing allowances, the prime sponsor shall, in accordance with regulations prescribed by the Secretary, allow additional sums for special circumstances such as exceptional expenses incurred by trainees, including but not limited to meal and travel allowances, or he may reduce such allowances by an amount reflecting the fair value of meals, lodging, or other necessaries furnished to the trainee. The prime sponsor shall take such action as may be necessary to insure that such persons receive no allowances with respect to periods during which they are failing to participate in such programs, training, or instruction as prescribed herein without good cause. Notwithstanding the preceding provisions of this subsection, the prime sponsor shall, in accordance with such regulations as the Secretary shall prescribe, make such adjustments as he deems appropriate in allowances which would otherwise be payable under this subchapter, including but not limited to adjustments which take into account the amount of time per week spent by the individual participating in such programs and adjustments to reflect the special economic circumstances which exist in the area in which the program is to be carried on. Allowances shall not be paid for any course of training having a duration in excess of one hundred and four weeks.

(b) Individuals receiving training on the job shall be compensated by the employer at such rates, including periodic increases, as may be deemed reasonable under regulations prescribed by the Secretary, considering such factors as industry, geographical region, and trainee proficiency, but in no event at a rate less than that specified in section 206(a)(1) of this title or, if higher, under the applicable State or local minimum wage law. (Pub. L. 93–203, title I, § 111, Dec. 28, 1973, 87 Stat. 849.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 815 of this title; title 20 section 1393d.

§ 822. Supplemental vocational education assistance.

(a) From the funds available to him for this section, the Secretary shall make grants to Governors to provide financial assistance, through State vocational education boards, to provide needed vocational education services in areas served by prime sponsors.

(b) All of the sums available to carry out this section shall be allotted among the States in the manner provided for allotting funds under section 813(a) of this title.

(c) Funds available under this section shall be used only for providing vocational education and services to participants in programs under this subchapter in accordance with an agreement between the State vocational education board and the prime sponsor. (Pub. L. 93–203, title I, § 112, Dec. 28, 1973, 87 Stat. 850.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 813 of this title.

SUBCHAPTER II.—PUBLIC SERVICE EMPLOYMENT PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 802, 815, 871, 963, 964 of this title; title 42 section 3056a.

§ 841. Congressional statement of purpose.

It is the purpose of this subchapter to provide unemployed and underemployed persons with transitional employment in jobs providing needed public services in areas qualifying for assistance and, wherever feasible, related training and manpower services to enable such persons to move into employment or training not supported under this subchapter. (Pub. L. 93–203, title II, § 201, Dec. 28, 1973, 87 Stat. 850, amended Pub. L. 93–567, title I, § 106(a), Dec. 31, 1974, 88 Stat. 1849.)

AMENDMENTS

1974—Pub. L. 93–567 substituted "qualifying for assistance" for "of substantial unemployment".

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 842. Allocation of funds.

(a) Eighty per centum of funds available for any fiscal year for use in areas of substantial unemployment under this subchapter shall be allocated among eligible applicants in accordance with the number of unemployed residing in areas of substan-

tial unemployment within the jurisdiction of the applicant compared to the number of unemployed residing in all such areas.

(b) The remainder may be distributed by the Secretary in his discretion taking into account the severity of unemployment within such areas. (Pub. L. 93–203, title II, § 202, Dec. 28, 1973, 87 Stat. 850, amended Pub. L. 93–567, title I, § 106(b), Dec. 31, 1974, 88 Stat. 1849.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–567 provided for use of funds in areas of substantial unemployment.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 981 of this title.

§ 843. Financial assistance.

(a) The Secretary shall enter into arrangements with eligible applicants in accordance with the provisions of this subchapter in order to make financial assistance available in areas of substantial unemployment for the purpose of providing transitional employment for unemployed and underemployed persons in jobs providing needed public services, and training and manpower services related to such employment which are otherwise unavailable, and enabling such persons to move into employment or training not supported under this subchapter.

(b) Not less than 90 per centum of the funds appropriated pursuant to this subchapter which are used by an eligible applicant for public service employment programs shall be expended only for wages and employment benefits to persons employed in public service jobs pursuant to this subchapter. (Pub. L. 93–203, title II, § 203, Dec. 28, 1973, 87 Stat. 850.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 844. Eligible applicants.

(a) Designation of prime sponsors and Indian tribes submitting applications as eligible applicants.

Financial assistance under this subchapter may be provided by the Secretary only pursuant to applications submitted by eligible applicants which are—

(1) prime sponsors qualified under subchapter I of this chapter;

(2) Indian tribes on Federal or State reservations.

(b) Eligible applicants for fiscal year 1974.

For fiscal year 1974, eligible applicants include any entity eligible to be a prime sponsor under section 812(a) of this title.

(c) Areas of substantial unemployment.

For the purpose of this subchapter "areas of substantial unemployment" means any area of sufficient size and scope to sustain a public service employment program and which has a rate of unemployment equal to or in excess of 6.5 per centum for three consecutive months as determined by the Secretary. Determinations concerning the rate of unemployment shall be made by the Secretary at least once each fiscal year.

(d) Delegation of functions of program agent.

(1) Whenever an area qualifying for assistance within the jurisdiction of an eligible applicant is also within the jurisdiction of a unit of general local government or a combination of such units having a population of 50,000 or more (but less than that necessary to qualify as a prime sponsor under subchapter I of this chapter), the eligible applicant shall delegate to such unit or units of general local government the functions of program agent with respect to the funds allocated to such eligible applicant on account of such area qualifying for assistance.

(2) For purposes of this subsection the functions of program agent include the administrative responsibility for developing, funding, overseeing, and monitoring programs within the area but such functions shall be carried on consistently with the application for financial assistance which shall be developed by the eligible applicant in cooperation with the program agent.

(3) Whenever two or more units of general local government qualify as program agents with respect to the same area qualifying for assistance the provisions of section 812(b)(2) of this title shall be applicable.

(e) Notice to Congress; publication in Federal Register.

Whenever the Secretary makes any determination required by this section, he shall promptly notify the Congress and shall publish such determination in the Federal Register. (Pub. L. 93–203, title II, § 204, Dec. 28, 1973, 87 Stat. 850, amended Pub. L. 93–567, title I, § 106(c), (d), Dec. 31, 1974, 88 Stat. 1849.)

AMENDMENTS

1974—Subsec. (a)(2). Pub. L. 93–567, § 106(c), deleted "and which include areas of substantial unemployment" following "State reservations".

Subsec. (d)(1). Pub. L. 93–567, § 106(d)(1), substituted "qualifying for assistance" for "of substantial unemployment" wherever appearing.

Subsec. (d)(3). Pub. L. 93–567, § 106(d)(2), substituted "qualifying for assistance" for "of substantial unemployment".

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 851, 962, 963 of this title; title 42 section 3246a.

§ 845. Applications for financial assistance.

(a) Design description of public service employment program set forth in application.

Financial assistance under this subchapter may be provided by the Secretary for any fiscal year only pursuant to an application which is submitted by an eligible applicant and which is approved by the Secretary in accordance with the provisions of this subchapter. Any such application shall set forth a public service employment program designed to provide employment, in jobs providing needed public services, for persons residing in areas qualifying for assistance who have been unemployed for at least thirty days and, where appropriate, training and manpower services related to such employment which are otherwise unavailable, and to enable such

persons to move into employment or training not supported under this subchapter.

(b) Aims of programs.

Programs assisted under this subchapter shall, to the extent feasbile, be designed with a view toward—

(1) developing new careers, or

(2) providing opportunities for career advancement, or

(3) providing opportunities for continued training, including on-the-job training, or

(4) providing transitional public service employment which will enable the individuals so employed to move into public or private employment or training not supported under this chapter.

(c) Requisite provisions of applications.

An application for financial assistance for a public service employment program under this subchapter shall include provisions setting forth—

(1) assurances that the activities and services for which assistance is sought under this subchapter will be administered by or under the supervision of the applicant, identifying any agency or institution designated to carry out such activities or services under such supervision;

(2) a description of the area to be served by such programs, and a plan for effectively serving on an equitable basis the significant segments of the population to be served, including data indicating the number of potential eligible participants and their income and employment status;

(3) assurances that only persons residing within the area qualifying for assistance will be hired to fill jobs created under this subchapter, and that the public services provided by such jobs shall, to the extent feasible, be designed to benefit the residents of such areas;

(4) assurances that special consideration will be given to the filling of jobs which provide sufficient prospects for advancement or suitable continued employment by providing complementary training and manpower services designed to (A) promote the advancement of participants to employment or training opportunities suitable to the individuals involved, whether in the public or private sector of the economy, (B) provide participants with skills for which there is an anticipated high demand, or (C) provide participants with self-development skills, but nothing contained in this paragraph shall be construed to preclude persons or programs for whom the foregoing goals are not feasible or appropriate;

(5) assurances (A) that special consideration in filling transitional public service jobs will be given to unemployed persons who served in the Armed Forces in Indochina or Korea on or after August 5, 1964, in accordance with criteria established by the Secretary (and who have received other than dishonorable discharges), and a description of the specific steps to be undertaken during such fiscal year to provide such special consideration, and of the types of jobs to be made available to such veterans, with special emphasis on the development of jobs which will utilize, to the maximum extent feasible, the skills which such veterans acquired in connection with their military training and service, and (B) that the applicant shall (i) make special efforts to acquaint such veterans with the program and the public service jobs available to veterans under this chapter, and (ii) coordinate efforts in behalf of such veterans with those activities authorized by chapter 41 of Title 38 (relating to Job Counseling and Employment Services for Veterans), or carried out by other public or private organizations or agencies;

(6) assurance that, to the extent feasible, public service jobs shall be provided in occupational fields which are most likely to expand within the public or private sector as the unemployment rate recedes;

(7) assurances that special consideration in filling transitional public service jobs will be given to unemployed persons who are the most severely disadvantaged in terms of the length of time they have been unemployed and their prospects for finding employment without assistance under this title, but such special consideration shall not authorize the hiring of any person when any other person is on lay-off from the same or any substantially equivalent job;

(8) assurances that no funds received under this subchapter will be used to hire any person to fill a job opening created by the action of an employer in laying off or terminating the employment of any regular employee not supported under this subchapter in anticipation of filling the vacancy so created by hiring an employee to be supported under this subchapter;

(9) assurances that due consideration be given to persons who have participated in manpower training programs for whom employment opportunities would not be otherwise immediately available;

(10) a description of the methods to be used to recruit, select, and orient participants, including specific eligibility criteria, and programs to prepare the participants for their job responsibilities;

(11) a description of unmet public service needs and a statement of priorities among such needs;

(12) a description of jobs to be filled, a listing of the major kinds of work to be performed and skills to be acquired and the approximate duration for which participants would be assigned to such jobs;

(13) the wages or salaries to be paid persons employed in public service jobs under this subchapter and a comparison with the wages paid for similar public occupations by the same employer;

(14) where appropriate, the education, training, and supportive services (including counseling and health care services) which complement the work performed;

(15) the planning for and training of supervisory personnel in working with participants;

(16) a description of career opportunities and job advancement potentialities for participants;

(17) assurances that procedures established pursuant to section 847(a) of this title will be complied with;

(18) assurances that agencies and institutions to whom financial assistance is made available

under this subchapter have undertaken, or will undertake, analyses of job descriptions and revaluations and, where shown necessary, revisions of qualification requirements at all levels of employment, including civil service requirements and practices relating thereto, in accordance with regulations prescribed by the Secretary, with a view toward removing artificial barriers to public employment of those whom it is the purpose of this subchapter to assist;

(19) assurances that the applicant will, where appropriate, maintain or provide linkages with upgrading and other manpower programs for the purpose of (A) providing those persons employed in public service jobs under this subchapter who want to pursue work with the employer, in the same or similar work, with opportunities to do so and to find permanent, upwardly mobile careers in that field, and (B) providing those persons so employed who do not wish to pursue permanent careers in such field, with opportunities to seek, prepare for, and obtain work in other fields;

(20) assurances that all persons employed under any such program, other than necessary technical, supervisory, and administrative personnel, will be selected from among unemployed and underemployed persons;

(21) assurances that the program will, to the maximum extent feasible, contribute to the elimination of artificial barriers to employment and occupational advancement, including civil service requirements which restrict employment opportunities for the disadvantaged;

(22) assurances that not more than one-third of the participants in the program will be employed in a bona fide professional capacity (as such term is used in section 213(a)(1) of this title), except that this paragraph shall not be applicable in the case of participants employed as classroom teachers, and the Secretary may waive this limitation in exceptional circumstances;

(23) a description of the manpower needs of local governments and of local educational agencies within the area to be served together with the comments of such governments and agencies where appropriate, and assurances that jobs will be allocated equitably to such governments and agencies taking into account the number of unemployed within their jurisdictions and the needs of the agencies;

(24) assurances that the jobs in each job category in no way infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service jobs not subsidized under this subchapter, and assurances that no job will be filled in other than an entry level position in each job category until applicable personnel procedures and collective bargaining agreements have been complied with;

(25) assurances that jobs funded under this subchapter are in addition to those that would be funded by the sponsor in the absence of assistance under this chapter; and

(26) such other assurances, arrangements, and conditions, consistent with the provisions of this subchapter, as the Secretary deems necessary, in accordance with such regulations as he shall prescribe.

(Pub. L. 93–203, title II, § 205, Dec. 28, 1973, 87 Stat. 851, amended Pub. L. 93–567, title I, § 106(e), (f), Dec. 31, 1974, 88 Stat. 1849.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–567, § 106(e), substituted "qualifying for assistance" for "of substantial unemployment".

Subsec. (c)(3). Pub. L. 93–567, § 106(f), substituted "area qualifying for assistance" for "areas of substantial unemployment".

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 847, 962, 964 of this title.

§ 846. Approval of applications.

An application, or modification or amendment thereof, for financial assistance under this subchapter may be approved only if the Secretary determines that—

(1) the application meets the requirements set forth in this subchapter;

(2) an opportunity has been provided to officials of the appropriate units of general local government to submit comments with respect to the application to the applicant and to the Secretary;

(3) an opportunity has been provided to the Governor of the State to submit comments with respect to the application to the applicant and to the Secretary; and

(4) where a labor organization represents employees who are engaged in similar work in the same area to that proposed in the application, an opportunity has been provided such organization to submit comments with respect to the application to the applicant and to the Secretary.

(Pub. L. 93–203, title II, § 206, Dec. 28, 1973, 87 Stat. 854.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 962 of this title.

§ 847. Special responsibilities of the Secretary.

(a) Periodic reviews of status of persons employed in public service jobs.

The Secretary shall establish procedures for periodic reviews by an appropriate agency of the status of each person employed in a public service job under this subchapter to assure that in the event that any person employed in a public service job under this subchapter and the reviewing agency find that such job will not provide sufficient prospects for advancement or suitable continued employment, maximum efforts shall be made to locate employment or training opportunities providing such prospects, and such person shall be offered appropriate assistance in securing placement in the opportunity which he chooses after appropriate counseling.

(b) Periodic review of implementing procedures.

The Secretary shall review the implementation of the procedures established under subsection (a) of

this section six months after funds are first obligated under this subchapter and at six-month intervals thereafter.

(c) Assistance to Indians in preparing, submitting, and implementing public service employment programs.

Where the Secretary determines that an Indian tribe on a Federal or State reservation is unable to submit an application to carry out a public service employment program which meets the requirements of section 845 of this title, the Secretary shall assist such tribe in preparing, submitting, and implementing a public service employment program. The provision of section 848 of this title shall apply to programs carried out under this subsection. (Pub. L. 93–203, title II, § 207, Dec. 28, 1973, 87 Stat. 854.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 845, 962 of this title.

§ 848. Special conditions.

(a) Determinations by Secretary as prerequisite to providing financial assistance to public service employment programs.

The Secretary shall not provide financial assistance for any program or activity under this subchapter unless he determines, in accordance with such regulations as he shall prescribe, that—

(1) the program (A) will result in an increase in employment opportunities over those opportunities which would otherwise be available, (B) will not result in the displacement of currently employed workers (including partial displacement such as a reduction in the hours of non-overtime work or wages or employment benefits), (C) will not impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed, and (D) will not substitute public service jobs for existing federally assisted jobs;

(2) persons employed in public service jobs under this chapter shall be paid wages which shall not be lower than whichever is the highest of (A) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938, if section 206(a)(1) of this title applied to the participant and if he were not exempt under section 213 of this title, (B) the State or local minimum wage for the most nearly comparable covered employment, or (C) the prevailing rates of pay for persons employed in similar public occupations by the same employer;

(3) funds under this subchapter will not be used to pay persons employed in public service jobs under this subchapter at a rate in excess of $10,000 per year;

(4) all persons employed in public service jobs under this subchapter will be assured of workmen's compensation, health insurance, unemployment insurance, and other benefits at the same levels and to the same extent as other employees of the employer and to working conditions and promotional opportunities neither more nor less favorable than such other employees enjoy;

(5) the provisions of section 351(a)(3) of Title 41 (relating to health and safety conditions) shall apply to such program or activity;

(6) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants;

(7) no funds under this subchapter will be used for the acquisition of, or for the rental or leasing of supplies, equipment, materials, or real property; and

(8) every participant shall be advised, prior to entering upon employment, of his rights and benefits in connection with such employment.

(b) Equitable distribution of public service employment opportunities.

Consistent with the provisions of this subchapter, the Secretary shall make financial assistance under this subchapter available in such a manner that, to the extent practicable, public service employment opportunities will be available on an equitable basis in accordance with the purposes of this subchapter among significant segments of the population of unemployed persons, giving consideration to the relative numbers of unemployed persons in each such segment.

(c) Notification to labor organizations.

Where a labor organization represents employees who are engaged in similar work in the same area to that proposed to be performed under any program for which an application is being developed for submission under this subchapter, such organization shall be notified and afforded a reasonable period of time prior to the submission of the application in which to make comments to the applicant and to the Secretary.

(d) Regulations.

The Secretary shall prescribe regulations to assure that programs under this subchapter have adequate internal administrative controls, accounting requirements, personnel standards, evaluation procedures, and other policies as may be necessary to promote the effective use of funds.

(e) Periodic reports.

The Secretary shall not provide financial assistance for any program under this subchapter unless he determines, in accordance with regulations which he shall prescribe, that periodic reports will be submitted to him containing data designed to enable the Secretary and the Congress to measure the relative and, where programs can be compared appropriately, comparative effectiveness of the programs authorized under this subchapter and other federally supported manpower programs. Such data shall include information on—

(1) characteristics of participants including age, sex, race, health, education level, and previous wage and employment experience;

(2) duration in employment situations, including information on the duration of employment of program participants for at least a year following the termination of participation in federally assisted programs and comparable information on other employees or trainees of participating employers; and

(3) total dollar cost per participant, including breakdown between wages, training, and supportive services, all fringe benefits, and administrative costs.

The Secretary shall compile such information on a State, regional, and national basis, and shall include such information in the report required by section 849 of this title.

(f) Discrimination prohibited.

The Secretary shall not provide financial assistance for any program under this subchapter unless the grant, contract, or agreement with respect thereto specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program participant or any applicant for participation in such program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(g) Political activities.

The Secretary shall not provide financial assistance for any program under this subchapter which involves political activities; and neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be, in any way or to any extent, engaged in the conduct of political activities in contravention of chapter 15 of Title 5.

(h) Sectarian instruction; religious worship.

The Secretary shall not provide financial assistance for any program under this subchapter unless he determines that participants in the program will not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship. (Pub. L. 93–203, title II, § 208, Dec. 28, 1973, 87 Stat. 855.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (a)(2), is classified to section 201 et seq. of this title.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 847, 849, 962, 964, 981 of this title.

§ 849. Special report.

(a) The Secretary shall transmit to the Congress at least annually a detailed report setting forth the activities conducted under this subchapter, including information derived from evaluations required by this subchapter and information on the extent to which (1) participants in such activities subsequently secure and retain public or private employment or participate in training or employability development programs, (2) segments of the population of unemployed persons are provided public service opportunities in accordance with the purposes of this subchapter.

(b) In compiling the data which the Secretary is required to report to the Congress under section 848(e) of this title, the Secretary shall obtain and compile information on practices and procedures implemented by prime sponsors affecting average annual wage rates paid to public service job holders and public service job opportunities described under this subchapter. The Secretary is authorized to make general recommendations to prime sponsors, on a regional and area basis, as he may deem appropriate, consistent with section 848(a)(3) of this title (relating to the maximum annual wage rate per public service job holder), taking into account average wages in the various areas served and the cost of living in such areas, with the aim of maintaining the number of jobs on a nationwide average in federally supported wage rates equivalent to $7,800 per public service job holder. (Pub. L. 93–203, title II, § 209, Dec. 28, 1973, 87 Stat. 856, amended Pub. L. 93–567, title I, § 105, Dec. 31, 1974, 88 Stat. 1848.)

AMENDMENTS

1974—Pub. L. 93–567 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 848, 962 of this title.

§ 850. Utilization of funds.

Funds available under this subchapter to an eligible applicant may, at its option, be utilized for residents of the area qualifying for such assistance for programs authorized under subchapter I and part A of subchapter III of this chapter. (Pub. L. 93–203, title II, § 210, Dec. 28, 1973, 87 Stat. 857, amended Pub. L. 93–567, title I, § 106(g), Dec. 31, 1974, 88 Stat. 1849.)

AMENDMENT

1974—Pub. L. 93–567 substituted "for residents of the area qualifying for such assistance" for "for residents of the areas of substantial unemployment designated under this subchapter".

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 962 of this title.

§ 851. Determination of areas of substantial unemployment; placement goals, waiver.

(a) The determinations to be made under section 844(c) of this title shall take into account the rate of unemployment for a period of three consecutive months even though all or part of such period may have occurred prior to December 28, 1973.

(b) No officer or employee of the Department of Labor shall, by regulation or otherwise, impose on any eligible applicant, as a condition for the receipt of financial assistance under this subchapter, any requirement that any eligible applicant must place in other jobs a specific number or proportion of public service jobholders supported under this subchapter. The Secretary may establish placement goals for eligible applicants, except that such goals must be identified as goals, not requirements, and any form or other document developed pursuant to such regulations shall give written notice to that effect. Any eligible applicant shall have the right, clearly stated in such regulations, to request a waiver of such goals if, in his judgment, such goals are not feasible. Such waiver, a request for which may be submitted at any time, may be granted by the Secretary where, in his judgment, local conditions warrant

it. Wherever such a waiver has been granted, failure to meet placement goals shall not be cited in any official review or evaluation of that eligible applicant's programs. (Pub. L. 93–203, title II, § 211, Dec. 28, 1973, 87 Stat. 857, amended Pub. L. 93–567, title I, § 103, Dec. 31, 1974, 88 Stat. 1847.)

AMENDMENTS

1974—Pub. L. 93–567 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 962 of this title.

SUBCHAPTER III.—SPECIAL FEDERAL RESPONSIBILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 802 of this title.

PART A.—SPECIAL TARGET GROUPS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 811, 850 of this title.

§ 871. Special manpower target groups.

(a) Additional manpower services.

The Secretary shall use funds available under this subchapter to provide additional manpower services as authorized under subchapters I and II of this chapter to segments of the population that are in particular need of such services, including youth, offenders, persons of limited English-speaking ability, older workers, and other persons which the Secretary determines have particular disadvantages in the labor market. The Secretary shall take into account the need for continued funding of programs of demonstrated effectiveness.

(b) Persons of limited English-speaking ability.

With respect to programs for persons of limited English-speaking ability under this chapter, the Secretary shall establish appropriate procedures to ensure that participants are provided with manpower training and related assistance and supportive services (where feasible, at times designed to meet the needs of individuals unable to attend during normal working hours) designed to increase the employment and training opportunities for unemployed and underemployed persons of limited English-speaking ability, including (A) the teaching of occupational skills in the primary language of such persons for occupations which do not require a high proficiency in English, and (B) developing new employment opportunities for limited English-speaking persons and opportunities for promotion within existing employment situations for such persons, including programs for the dissemination of appropriate information, and job placement, and counseling assistance, and the conduct of training and employment programs, in the primary language of such persons, as well as programs designed to increase the English-speaking ability of such persons.

(c) Offenders.

With respect to programs for offenders referred to in subsection (a) of this section, the Secretary shall establish appropriate procedures to insure that participants are provided with such manpower training and related assistance and support services (including basic education, drug addiction or dependency rehabilitation, health care and other services) which will enable them to secure and obtain meaningful employment. To ensure the objectives of this subsection, the Secretary may, wherever feasible, provide for appropriate arrangements with employers and labor organizations, appropriate parole, probationary and judicial authorities, and for the utilization of training equipment comparable to that currently used for the job in which training is furnished. To support such programs, the Secretary shall develop information concerning the special needs of offenders for such services, including special studies regarding the incidence of unemployment among offenders and the means of increasing employment opportunity for offenders.

(d) Veterans.

The Secretary shall carry out fully and effectively his responsibilities for the assignment of assistant veterans employment representatives under section 2003 of Title 38 and his other responsibilities under chapter 41 or Title 38 and for the listing of all suitable employment openings with local offices of the State employment service by Federal contractors and subcontractors and providing for the special emphasis as required by section 2012(a) of Title 38. (Pub. L. 93–203, title III, § 301, Dec. 28, 1973, 87 Stat. 857.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

OLDER AMERICAN COMMUNITY SERVICE EMPLOYMENT PROJECTS AS PART OF OPERATION MAINSTREAM PROGRAM; APPROPRIATIONS

Pub. L. 94–135, title I, § 113(c), Nov. 28, 1975, 89 Stat. 725, provided that: "Notwithstanding any other provision of law, sums appropriated to carry out title IX of the Older Americans Comprehensive Services Amendments of 1973 [former sections 3061 to 3067 of Ttitle 42] for the fiscal year ending June 30, 1975, may be used for older American community service employment projects conducted as part of the Operation Mainstream program under title III of the Comprehensive Employment and Training Act of 1973 [this subchapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 816 of this title; title 20 section 1393a.

§ 872. Indian manpower programs.

(a) Congressional findings.

The Congress finds that (1) serious unemployment and economic disadvantage exist among members of Indian and Alaskan native communities; (2) there is a compelling need for the establishment of comprehensive manpower training and employment programs for members of those communities; (3) such programs are essential to the reduction of economic disadvantage among individual members of those communities and to the advancement of economic and social development in these communities consistent with their goals and life styles.

(b) Congressional declarations.

The Congress therefore declares that, because of the special relationship between the Federal Government and most of those to be served by the provisions of this section, (1) such programs can best

be administered at the national level; (2) such programs shall be available to federally recognized Indian tribes, bands, and individuals and to other groups and individuals of native American descent such as, but not limited to, the Lummis in Washington, the Menominees in Wisconsin, the Klamaths in Oregon, the Oklahoma Indians, the Passamaquoddys and Penobscots in Maine, and Eskimos and Aleuts in Alaska; (3) such programs shall be administered in such a manner as to maximize the Federal commitment to support growth and development as determined by representatives of the communities and groups served by this part.

(c) Utilization of Indian tribes, bands, and groups; non-reservation Indians.

(1) In carrying out his responsibilities under this section, the Secretary shall, wherever possible, utilize Indian tribes, bands or groups (including Alaska Native villages or groups as defined in the Alaska Native Claims Settlement Act of December 18, 1971) having a governing body, for the provision of manpower services under this subchapter. When the Secretary determines that such tribe, band, or group has demonstrated the capability to effectively administer a comprehensive manpower program, he shall require such tribe, band, or group to submit to him a comprehensive plan meeting the requirements of section 815 of this title.

(2) In carrying out his responsibilities under this section the Secretary shall make arrangements with prime sponsors and organizations (meeting requirements prescribed by the Secretary) serving nonreservation Indians for programs and projects designed to meet the needs of such Indians for employment and training and related services.

(d) Approval of Indian tribes, bands, or groups for the utilization of public or private non-profit agencies.

Whenever the Secretary determines not to utilize Indian tribes, bands, or groups for the provisions of manpower services under this section, he shall, to the maximum extent feasible, enter into arrangements for the provision of such services with public or private nonprofit agencies which meet with the approval of the tribes, bands, or groups to be served.

(e) Administrative procedures and machinery.

The Secretary is directed to take appropriate action to establish administrative procedures and machinery (including personnel having particular competence in this field) for the administration of Indian manpower programs authorized under this chapter.

(f) Availability of funds.

Funds available for this section shall be expended for programs and activities consistent with the purposes of this part, including but not limited to such programs and activities carried out by eligible applicants under other provisions of this chapter.

(g) Reservation of funds.

For the purpose of carrying out this section, the Secretary shall reserve from funds available for this subchapter an amount equal to not less than 4 percent of the amount allocated pursuant to section 813(a)(1) of this title.

(h) Federal Government's trust responsibilities to Indians not abrogated.

No provision of this section shall abrogate in any way the trust responsibilities of the Federal Government to Indian bands or tribes. (Pub. L. 93–203, title III, § 302, Dec. 28, 1973, 87 Stat. 858.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in subsec. (c)(1), is classified to section 1601 et seq. of Title 43, Public Lands.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 873. Migrant and seasonal farmworker manpower program.

(a) The Congress finds and declares that—

(1) chronic seasonal unemployment and underemployment in the agricultural industry, substantially affected by recent advances in technology and mechanization, constitute a substantial portion of the Nation's rural manpower problem and substantially affects the entire national economy;

(2) because of the special nature of certain farmworker manpower problems such programs can best be administered at the national level.

(b)(1) Funds available for this section shall be expended for programs and activities consistent with the purposes of this section, including but not limited to programs and activities carried out by eligible applicants under other provisions of this chapter.

(2) For the purpose of carrying out this section, the Secretary shall reserve from funds available for this subchapter an amount equal to not less than 5 percent of the amount allocated pursuant to section 813(a)(1) of this title. (Pub. L. 93–203, title III, § 303, Dec. 28, 1973, 87 Stat. 859.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 874. Youth programs and other special programs.

(a) The Secretary may provide financial assistance in urban and rural areas, including areas having large concentrations or proportions of low-income, unemployed persons, and rural areas having substantial outmigration to urban areas, for comprehensive work and training programs, and necessary supportive and follow-up services, including the following:

(1) programs to provide part-time employment, on-the-job training, and useful work experience for students from low-income families who are in the ninth through twelfth grades of school (or are of an age equivalent to that of students in such grades) and who are in need of the earnings to permit them to resume or maintain attendance in school;

(2) programs to provide unemployed, underemployed, or low-income persons (aged sixteen and over) with useful work and training (which must include sufficient basic education and institutional or on-the-job training) designed to assist those persons to develop their maximum occupational potential and to obtain regular competitive employment;

(3) jobs, including those in recreation and related programs, for economically disadvantaged youths during the summer months;

(4) special programs which involve work activities directed to the needs of those chronically unemployed poor who have poor employment prospects and are unable, because of age, lack of employment opportunity, or otherwise, to secure appropriate employment or training assistance under other programs, and which, in addition to other services provided, will enable such persons to participate in projects for the betterment, physical improvement, or beautification of the community or areas served by the program;

(5) special programs which provide unemployed or low-income persons with jobs leading to career opportunities, including new types of careers, in programs designed to improve the physical, social, economic, or cultural conditions of the community or area served;

(6) special services, when required, for middle-aged and older men and women, including recruitment, placement, and counseling for such persons who are unemployed as a result of the closing of a plant or factory or a permanent large-scale reduction in the work force of a locality, and provide grants to or contracts with prime sponsors to assist such sponsors in securing part-time or temporary employment for middle-aged and older persons; and

(7) other manpower programs conducted by community-based organizations.

(b) To the maximum extent feasible, programs or components of programs conducted under this section shall be linked to comprehensive work and training programs conducted by prime sponsors under subchapter I of this chapter, but the Secretary may provide financial assistance to a public agency or private organization other than a prime sponsor to carry out one or more component programs described in subsection (a) of this section when he determines, after soliciting and considering comments of the appropriate prime sponsor, if any, that such assistance would enhance program effectiveness. In the case of programs under subsection (a)(1) of this section, financial assistance may be provided directly to local or State education agencies, after consultation with the Secretary of Health, Education, and Welfare, for the operation of such programs. (Pub. L. 93–203, title III, § 304, Dec. 28, 1973, 87 Stat. 859.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 964, 985 of this title.

§ 875. Consultation with Secretary of Health, Education, and Welfare.

The Secretary of Labor shall consult with the Secretary of Health, Education, and Welfare, with respect to arrangements for services of a health, education, or welfare character under this chapter, and the Secretary of Health, Education, and Welfare shall solicit the advice and comments of State educational agencies with respect to education services. Such services include but are not limited to basic or general education; educational programs conducted for offenders; institutional training; health care, child care, and other supportive services; and new careers and job restructuring in the health, education, and welfare professions. When the Secretary of Labor arranges for the provision of basic education and vocational training directly, pursuant to the provisions of this subchapter, he shall obtain the approval of the Secretary of Health, Education, and Welfare for such arrangements. (Pub. L. 93–203, title III, § 306, Dec. 28, 1973, 87 Stat. 860.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

PART B.—RESEARCH, TRAINING, AND EVALUATION

§ 881. Research.

(a) Establishment of comprehensive program of manpower research.

To assist the Nation in expanding work opportunities and assuring access to those opportunities for all who desire it, the Secretary shall establish a comprehensive program of manpower research utilizing the methods, techniques, and knowledge of the behavioral and social sciences and such other methods, techniques, and knowledge as will aid in the solution of the Nation's manpower problems. This program will include, but not be limited to, studies, the findings of which may contribute to the formulation of manpower policy; development or improvement of manpower programs; increased knowledge about labor market processes; reduction of unemployment and its relationships to price stability; promotion of more effective manpower development, training, and utilization; improved national, regional, and local means of measuring future labor demand and supply; enhancement of job opportunities; skill training to qualify employees for positions of greater skill, responsibility, and remuneration; meeting of manpower shortages; easing of the transition from school to work, from one job to another, and from work to retirement, opportunities and services for older persons who desire to enter or reenter the labor force, and for improvements of opportunities for employment and advancement through the reduction of discrimination and disadvantage arising from poverty, ignorance, or prejudice.

(b) Experimental program.

The Secretary shall establish a program of experimental, developmental, demonstration, and pilot projects, through grants to or contracts with public or private non-profit organizations, or through contracts with other private organizations, for the purpose of improving techniques and demonstrating the effectiveness of the specialized methods in meeting the manpower, employment, and training problems, however, nothing in this subsection shall authorize the Secretary to carry out employment programs experimenting with subsidized wages in the private sector or with wages less than those established by the Fair Labor Standards Act of 1938, as amended, for employment subject to that Act. In carrying out

this subsection with respect to programs designed to provide employment and training opportunities for low-income people, the Secretary shall consult with such other agencies as may be appropriate. Where programs under this section require institutional training, appropriate arrangements for such training shall be agreed to by the Secretary of Labor and the Secretary of Health, Education, and Welfare.

(c) Program evaluation.

The Secretary is authorized to conduct, either directly or by way of contract, grant, or other arrangement, a thorough evaluation of all programs and activities conducted pursuant to this chapter to determine the effectiveness of such programs and activities in meeting the special needs of disadvantaged, chronically unemployed, and low-income persons for meaningful employment opportunities and supportive services to continue or resume their education and employment and to become more responsible and productive citizens.

(d) Grants, contracts, and other arrangements.

The Secretary shall conduct such research and investigations as give promise of furthering the objectives of this chapter either directly or through grants, contracts, or other arrangements. (Pub. L. 93–203, title III, § 311, Dec. 28, 1973, 87 Stat. 860.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (b), is classified to section 201 et seq. of this title.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 882. Labor market statistics and job bank.

(a) Comprehensive system of labor market information.

The Secretary shall develop a comprehensive system of labor market information on a national, State, local, or other appropriate basis, which shall be made publicly available in a timely fashion.

(b) Statistically accurate data on employment, underemployment, and labor demand.

In addition to the monthly national unemployment statistics, the Secretary shall develop reliable methods, including the use of selected sample surveys, to produce more statistically accurate data on unemployment, underemployment and labor demand by State, local, and poverty areas.

(c) Annual statistical measure of labor market related economic hardship.

The Secretary shall develop preliminary data for an annual statistical measure of labor market related economic hardship in the nation. Among the factors to be considered in developing such a measure are unemployment, labor force participation, involuntary part-time employment, and full-time employment at less than poverty wages.

(d) Household budget data.

The Secretary shall develop methods to establish and maintain more comprehensive household budget data at different levels of living, including a level of adequacy, to reflect the differences of household living costs in regions and localities, both urban and rural.

(e) Sums set aside; notification to Congress.

The Secretary shall set aside, out of sums available to the department for any fiscal year including sums available under section 802(e) of this title, an amount which he determines is necessary and appropriate to enable him to carry out the provisions of this section, and shall no later than sixty days after such sums are appropriated and made available notify the appropriate committees of the Congress of the amount so set aside and the basis for his determination of need and appropriateness.

(f) Report to Congressional committees.

The Secretary shall report to the Senate Committee on Labor and Public Welfare and to the House Committee on Education and Labor the results of his efforts under subsections (a), (b), and (c) of this section by December 31, 1974.

(g) Job bank.

The Secretary shall establish and carry out a nationwide computerized job bank and matching program (utilizing the listing of all suitable employment openings with local offices of the State employment service by Federal contractors and subcontractors and providing for the special emphasis as required by section 2012(a) of Title 38) on a regional, State, and local basis, using electronic data processing and telecommunications systems to the maximum extent possible for the purpose of identifying sources of available persons and job vacancies, providing an expeditious means of matching the qualifications of unemployed, underemployed, and economically disadvantaged persons with employer requirements and job opportunities, and referring and placing such persons in jobs. (Pub. L. 93–203, title III, § 312, Dec. 28, 1973, 87 Stat. 861.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 883. Evaluation.

(a) Program comparisons.

The Secretary shall provide for the continuing evaluation of all programs and activities conducted pursuant to this chapter, including their cost in relation to their effectiveness in achieving stated goals, their impact on communities and participants their implication for related programs, the extent to which they meet the needs of persons of various ages, and the adequacy of the mechanism for the delivery of services. In conducting the evaluations called for by this subsection, the Secretary shall compare the effectiveness of programs conducted by prime sponsors of the same class, of different classes, and shall compare the effectiveness of programs conducted by prime sponsors with similar programs carried out by the Secretary under section 820 of this title, or under this subchapter. He shall also arrange for obtaining the opinions of participants about the strengths and weaknesses of the programs.

(b) Reports to Secretary.

In order to enable the Secretary to measure the relative and, where programs can be compared appropriately, comparative effectiveness of programs authorized under this chapter and part C of title IV

of the Social Security Act, he shall require that periodic reports be submitted to him. Reports submitted under this subsection shall contain data which shall include information on—

(1) enrollee characteristics, including age, sex, race, health, education level, and previous wage and employment experience;

(2) duration in training and employment situations, including information on the duration of employment of program participants for at least a year following the termination of federally assisted programs and comparable information on other employees or trainees of participating employers; and

(3) total dollar cost per trainee, including breakdown between salary or stipend, training and supportive services, and administrative costs.

From the information received pursuant to this section, the Secretary shall compile the information on a State, regional, and national basis.

(c) Certificates and vouchers for economically disadvantaged.

The Secretary is authorized to carry out a special program to demonstrate the efficacy of providing certificates or vouchers to economically disadvantaged, unemployed, and underemployed persons entitling private employers who provide employment, training, and services to each person volunteering to participate in such program to payment in amounts equal to the face value of the certificate for specified periods of time during which each such person may not be fully productive. (Pub. L. 93–203, title III, § 313, Dec. 28, 1973, 87 Stat. 862.)

REFERENCES IN TEXT

Part C of title IV of the Social Security Act, referred to in subsec. (b), is classified to section 630 et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 884. Removal of artificial barriers to employment and advancement.

The Secretary, in consultation with appropriate departments and agencies of the Federal Government, shall conduct a continuing study of the extent to which artificial barriers to employment and occupation advancement, including civil service requirements and practices relating thereto, within agencies conducting programs under this chapter, restrict the opportunities for employment and advancement within such agencies and shall develop and promulgate guidelines, based upon such study, setting forth recommendations for task and skill requirements for specific jobs and recommended job descriptions at all levels of employment, designed to encourage career employment and occupational advancement within such agencies. (Pub. L. 93–203, title III, § 314, Dec. 28, 1973, 87 Stat. 863.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 885. Training and technical assistance.

The Secretary, in consultation with the Secretary of Health, Education, and Welfare, and other appropriate officials, where appropriate, shall provide directly or through grants, contracts, or other arrangements, preservice and inservice training for specialized, supportive, and supervisory or other personnel and technical assistance which is needed in connection with the programs established under this chapter. (Pub. L. 93–203, title III, § 315, Dec. 28, 1973, 87 Stat. 863.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SUBCHAPTER IV.—JOB CORPS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 802, 811 of this title.

§ 911. Congressional statement of purpose.

This subchapter establishes a Job Corps for low-income disadvantaged young men and women, sets forth standards and procedures for selecting individuals as enrollees in the Job Corps, authorizes the establishment of residential and nonresidential centers in which enrollees will participate in intensive programs of education, vocational training work experience, counseling and other activities, and prescribes various other powers, duties, and responsibilities incident to the operation and continuing development of the Job Corps. The purpose of this subchapter is to assist young persons who need and can benefit from an unusually intensive program, operated in a group setting, to become more responsive, employable, and productive citizens; and to do so in a way that contributes, where feasible, to the development of National, State, and community resources, and to the development and dissemination of techniques for working with the disadvantaged that can be widely utilized by public and private institutions and agencies. (Pub. L. 93–203, title IV, § 401, Dec. 28, 1973, 87 Stat. 863.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 912. Establishment of Job Corps.

There is established within the Department of Labor a "Job Corps". (Pub. L. 93–203, title IV, § 402, Dec. 28, 1973, 87 Stat. 864.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 913. Individuals eligible for enrollment in Job Corps.

To become an enrollee in the Job Corps, a young man or woman must be a person who—

(1) is a permanent resident of the United States, who has attained age fourteen but not attained age twenty-two at the time of enrollment;

(2) is a low-income individual or member of a low-income family who requires additional education, training, or intensive counseling and related assistance in order to secure and hold meaningful employment, participate successfully in regular schoolwork, qualify for other training programs suitable to his needs, or satisfy Armed Forces requirements;

(3) is currently living in an environment so characterized by cultural deprivation, a disruptive homelife, or other disorienting conditions as to substantially impair his prospects for successful participation in any other program providing needed training, education, or assistance;

(4) is determined, after careful screening as provided for in sections 914 and 915 of this title, to have the present capabilities and aspirations needed to complete and secure the full benefit of the program authorized in this subchapter, and to be free of medical and behavioral problems so serious that he could not or would not be able to adjust to the standards of conduct and discipline or pattern of work and training which that program involves; and

(5) meets such other standards for enrollment as the Secretary may prescribe (including special standards for the enrollment on a residential basis of 14 and 15 year olds) and agrees to comply with all applicable Job Corps rules and regulations.

(Pub. L. 93–203, title IV, § 403, Dec. 28, 1973, 87 Stat. 864.).

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 914. Screening and selection of applicants; generally.

(a) The Secretary shall prescribe necessary rules for the screening and selection of applicants for enrollment in the Job Corps. To the extent practicable, rules established under this section shall be implemented through arrangements which make use of agencies and organizations such as community action agencies, public employment offices, professional groups, and labor organizations. The rules shall establish specific standards and procedures for conducting screening and selection activities; shall encourage recruitment through agencies and individuals having contact with youths over substantial periods of time and able, accordingly, to offer reliable information as to their needs and problems; and shall provide for necessary consultation with other individuals and organizations, including court, probation, parole, law enforcement, education, welfare, and medical authorities and advisers. The rules shall also provide for—

(1) the interviewing of each applicant for the purpose of—

(A) determining whether his educational and vocational needs can best be met through the Job Corps or any alternative program in his home community;

(B) obtaining from the applicant pertinent data relating to his background, needs, and interests for evaluation in determining his eligibility and potential assignment; and

(C) giving the applicant a full understanding of the Job Corps program and making clear what will be expected of him as an enrollee in the event of his acceptance; and

(2) the conduct of a careful and systematic inquiry concerning the applicant's background for the effective development and, as appropriate, clarification of information concerning his age, citizenship, school and draft status, health, employability, past behavior, family income, environment, and other matters related to a determination of his eligibility.

(b) The Secretary shall make no payments to any individual or organization solely as compensation for the service of referring the names of candidates for enrollment in the Jobs Corps.

(c) The Secretary shall take all necessary steps to assure that the enrollment of the Jobs Corps includes an appropriate number of candidates selected from rural areas, taking into account the proportion of eligible youth who reside in rural areas and the need to provide residential facilities for such youth in order to meet problems of wide geographic dispersion. (Pub. L. 93–203, title IV, § 404, Dec. 28, 1973, 87 Stat. 864.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 913 of this title.

§ 915. Same; special limitations.

(a) No individual shall be selected as an enrollee unless it is determined that there is reasonable expectation that he can participate successfully in group situations and activities with other enrollees, that he is not likely to engage in actions or behavior that would prevent other enrollees from receiving the benefit of the program or be incompatible with the maintenance of sound discipline and satisfactory relationships between any center to which he might be assigned and surrounding communities, and that he manifests a basic understanding of both the rules to which he will be subject and of the consequences of failure to observe those rules. Before selecting an individual who has a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction, or other major behavioral aberrations, the Secretary of Labor shall obtain a finding from a professionally qualified person who knows such potential enrollee's individual situation that there is reasonable expectation that his conduct will not be inimical to the goals and success of the Job Corps and that the opportunity provided by the Job Corps will help him to overcome his problem.

(b) An individual who otherwise qualifies for enrollment may be selected even though he is on probation or parole, but only if his release from the immediate supervision of the cognizant probation or parole officials is mutually satisfactory to those officials and the Secretary, does not violate applicable laws or regulations, and if the Secretary has arranged to provide all supervision of the individual and all reports to State or other authorities that may be necessary to comply with applicable probation or parole requirements. (Pub. L. 93–203, title IV, § 405, Dec. 28, 1973, 87 Stat. 865.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 913 of this title.

§ 916. Enrollment and assignment.

(a) Two year limit on enrollment.

No individual may be enrolled in the Job Corps for more than two years, except as the Secretary may authorize in special cases.

(b) Military service obligation not relieved by Job Corps enrollment.

Enrollment in the Job Corps shall not relieve any individual of obligations under the Military Selective Service Act.

(c) Oath requirement.

Each enrollee (other than a native and citizen of Cuba described in section 2949(3) of Title 42 or a permanent resident of the Trust Territory of the Pacific Islands) must take and subscribe to an oath or affirmation in the following form: "I do solemnly swear (or affirm) that I bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies foreign and domestic." The provisions of section 1001 of Title 18 shall be applicable to this oath or affirmation.

(d) Assignment to contiguous areas.

After the Secretary has determined whether an enrollee is to be assigned to a men's training center, a conservation center, or a women's training center, the enrollee, shall be assigned to the center of the appropriate type in which a vacancy exists which is closest to the enrollee's home, except that the Secretary, on an individual basis, may waive this requirement when overriding considerations justify such action. Assignments to centers in areas more remote from the enrollee's home shall be carefully limited to situations in which such action is necessary in order to insure an equitable opportunity for disadvantaged youth from various sections of the country to participate in the program, to prevent undue delays in the assignment of individual enrollees, to provide an assignment which adequately meets the educational or other needs of the enrollee or is necessary for efficiency and economy in the operation of the program.

(e) Male enrollees.

Assignments of male enrollees shall be made so that, at any one time, at least 40 per centum of those enrollees are assigned to conservation centers as described in section 917 of this title, or to other centers or projects where their work activity is primarily directed to the conservation, development, or management of public natural resources or recreational areas and is performed under the direction of personnel of agencies regularly responsible for the functions relating to such resources or areas. (Pub. L. 93–203, title IV, § 406, Dec. 28, 1973, 87 Stat. 865.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b), is classified to section 451 et seq. of the Appendix to Title 50, War and National Defense.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 917. Job Corps centers.

(a) The Secretary may make agreements with Federal, State, or local agencies, or private organizations for the establishment and operation of Job Corps centers. Job Corps centers may be residential or nonresidential in character, or both, and shall be designed and operated so as to provide enrollees, in a well-supervised setting, with education, vocational training, work experience (either in direct program activities or through arrangements with employers), counseling, and other services appropriate to their needs. The centers shall include conservation centers, to be known as Civilian Conservation Centers, to be located primarily in rural areas and to provide, in addition to other training and assistance, programs of work experience focused upon activities to conserve, develop, or manage public natural resources or public recreational areas or to assist in developing community projects in the public interest. The centers shall also include men's and women's training centers to be located in either urban or rural areas and to provide activities which shall include training and other services appropriate for enrollees who can be expected to participate successfully in training for specific types of skilled or semiskilled employment.

(b) To the extent feasible, men's and women's training centers shall offer education and vocational training opportunities, together with supportive services, on a nonresidential basis to participants in programs described in subchapter I of this chapter. Such opportunities may be offered on a reimbursable basis or through such other arrangements as the Secretary may specify. (Pub. L. 93–203, title IV, § 407, Dec. 28, 1973, 87 Stat. 866.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 916 of this title.

§ 918. Program activities.

(a) Required features of program.

Each Job Corps center shall be operated so as to provide enrollees with an intensive, well-organized and fully supervised program of education, vocational training, work experience, planned avocational and recreational activities, physical rehabilitation and development, and counseling. To the fullest extent feasible, the required program for each enrollee shall include activities designed to assist him in choosing realistic career goals, coping with problems he may encounter in his home community or in adjusting to a new community, and planning and managing his daily affairs in a manner that will best contribute to a long-term upward mobility. Center programs shall include required participation in center maintenance support and related work activity as appropriate to assist enrollees in increasing their sense of contribution, responsibility, and discipline.

(b) Education and vocational training.

To the extent practicable, the Secretary may arrange for enrollee education and vocational train-

ing through local public or private educational agencies, vocational educational institutions, or technical institutes where such institutions or institutes can provide training comparable in cost and substantially equivalent in quality to that which he could provide through other means.

(c) Certificates.

Arrangements for education shall, to the extent feasible, provide opportunities for qualified enrollees to obtain the equivalent of a certificate of graduation from high school. The Secretary, with the concurrence of the Secretary of Health, Education, and Welfare, shall develop certificates to be issued to enrollees who have satisfactorily completed their services in the Job Corps and which will reflect the enrollee's level of educational attainment.

(d) Coordination with community work-experience programs.

The Secretary shall prescribe regulations to assure that Job Corps work-experience programs or activities do not displace presently employed workers or impair existing contracts for service and will be coordinated with other work-experience programs in the community. (Pub. L. 93–203, title IV, § 408, Dec. 28, 1973, 87 Stat. 866.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 919. Allowances and support.

(a) Limitations; enrollee contributions.

The Secretary may provide enrollees with such personal, travel and leave allowances, and such quarters, subsistence, transportation, equipment, clothing, recreational services, and other expenses as he may deem necessary or appropriate to their needs. Personal allowances shall be established at a rate not to exceed $35 per month during the first six months of an enrollee's participation in the program and not to exceed $50 per month thereafter, except that allowances in excess of $35 per month, but not exceeding $50 per month, may be provided from the beginning of an enrollee's participation if it is expected to be of less than six months' duration and the Secretary is authorized to pay personal allowances in excess of the rates specified herein in unusual circumstances as determined by him. Such allowances shall be graduated up to the maximum so as to encourage continued participation in the program, achievement and the best use by the enrollee of the funds so provided and shall be subject to reduction in appropriate cases as a disciplinary measure. To the degree reasonable, enrollees shall be required to meet or contribute to costs associated with their individual comfort and enjoyment from their personal allowances.

(b) Leave accrual rules.

The Secretary shall prescribe specific rules governing the accrual of leave by enrollees. Except in the case of emergency, he shall in no event assume transportation costs connected with leave of any enrollee who has not completed at least six months service in the Job Corps.

(c) Readjustment allowance; advancement or reduction.

The Secretary may provide each former enrollee upon termination, a readjustment allowance at a rate not to exceed $50 for each month of satisfactory participation in the Job Corps. No enrollee shall be entitled to a readjustment allowance, however, unless he has remained in the program at least ninety days, except in unusual circumstances as determined by the Secretary. The Secretary may, from time to time, advance to or on behalf of an enrollee such portions of his readjustment allowances as the Secretary deems necessary to meet extraordinary financial obligations incurred by that enrollee; and he may also, pursuant to rules or regulations, reduce the amount of an enrollee's readjustment allowance as a penalty for misconduct during participation in the Job Corps. In the event of an enrollee's death during his period of service, the amount of any unpaid readjustment allowance shall be paid in accordance with the provisions of section 5582 of Title 5.

(d) Payment of readjustment allowance to enrollee's spouse, child, or other relative.

Under such circumstances as the Secretary may determine, a portion of the readjustment allowance of an enrollee not exceeding $25 for each month of satisfactory service may be paid during the period of service of the enrollee directly to a spouse or child of an enrollee or to any other relative who draws substantial support from the enrollee, and any sum so paid shall be supplemented by the payment of an equal amount by the Secretary. (Pub. L. 93–203, title IV, § 409, Dec. 28, 1973, 87 Stat. 867.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 922 of this title.

§ 920. Standards of conduct.

(a) Within Job Corps centers standards of conduct and deportment shall be provided and stringently enforced. In the case of violations committed by enrollees, dismissals from the Corps or transfers to other locations shall be made in every instance where it is determined that retention in the Corps, or in the particular Job Corps center, will jeopardize the enforcement of such standards of conduct and deportment or diminish the opportunity of other enrollees.

(b) In order to promote the proper moral and disciplinary conditions in the Job Corps, the individual directors of Job Corps centers shall be given full authority to take appropriate disciplinary measures against enrollees including, but not limited to, dismissal from the Jobs Corps, subject to expeditious appeal procedures to higher authority, as provided under regulations established by the Secretary. (Pub. L. 93–203, title IV, § 410, Dec. 28, 1973, 87 Stat. 868.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 921. Community participation; community advisory councils.

The Secretary shall encourage and shall cooperate in activities designed to establish a mutually beneficial relationship between Job Corps centers and surrounding or nearby communities. These activities shall include the establishment of community advisory councils to provide a mechanism for joint discussion of common problems and for planning programs of mutual interest. Whenever possible, such advisory councils shall be formed by and coordinated under the local community action agency. Youth participation in advisory council affairs shall be encouraged and where feasible separate youth councils may be established, to be composed of representative enrollees and representative young people from the communities. The Secretary shall establish necessary rules and take necessary action to assure that each center is operated in a manner consistent with this section with a view to achieving, so far as possible, objectives which shall include—

(1) giving community officials appropriate advance notice of changes in center rules, procedures, or activities that may affect or be of interest to the community;

(2) affording the community a meaningful voice in center affairs of direct concern to it, including policies governing the issuance and terms of passes to enrollees;

(3) providing center officials with full and rapid access to relevant community groups and agencies, including law enforcement agencies and agencies which work with young people in the community;

(4) encouraging the fullest practicable participation of enrollees in programs or projects for community improvement or betterment, with adequate advance consultation with business, labor, professional, and other interested community groups and organizations;

(5) arranging recreational, athletic, or similar events in which enrollees and local residents may participate together;

(6) providing community residents with opportunities to work with enrollees directly, as part-time instructors, tutors, or advisers, either in the center or in the community;

(7) developing, where feasible, job or career opportunities for enrollees in the community; and

(8) promoting interchanges of information and techniques among, and cooperative projects involving, the center and community schools, educational institutions, and agencies serving young people.

(Pub. L. 93–203, title IV, § 411, Dec. 28, 1973, 87 Stat. 868.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 922. Counseling and job placement.

(a) Testing and counseling at regular intervals.

The Secretary shall provide for the counseling and testing of each enrollee at regular intervals to follow his progress in educational and vocational programs.

(b) Job placement.

The Secretary shall counsel and test each enrollee prior to his scheduled termination to determine his capabilities and shall place him in a job in the vocation for which he is trained and in which he is likely to succeed, or shall assist him in attaining further training or education. In placing enrollees in jobs, the Secretary shall utilize the United States Employment Service to the fullest extent possible.

(c) Status and progress of terminees.

The Secretary of Labor shall make arrangements to determine the status and progress of terminees and to assure that their need for further education, training, and counseling are met.

(d) Availability of training records to Department of Labor and Office of Economic Opportunity.

Upon termination of an enrollee's training, a copy of his pertinent records, including data derived from his counseling and testing, other than confidential information, shall be made available immediately to the Department of Labor and the Office of Economic Opportunity.

(e) Readjustment allowance; records of former enrollees; copies to Secretary.

The Secretary shall, to the extent feasible in accordance with section 2979(b) of Title 42, arrange for the readjustment allowance provided for in section 919(c) of this title, less any sums already paid pursuant to subsection (d) of section 919 of this title, to be paid to former enrollees (who have not already found employment) at the public employment service office nearest the home of any such former enrollee if he is returning to his home, or at the nearest such office to the community in which the former enrollee has indicated an intent to reside. The Secretary shall make arrangements by which public employment service officers will maintain records regarding former enrollees who are thus paid at such offices including information as to—

(1) the number of former enrollees who have declined the offices' help in finding a job;

(2) the number who were successfully placed in jobs without further education or training;

(3) the number who were found to require further training before being placed in jobs and the types of training programs in which they participated; and

(4) the number who were found to require further remedial or basic education in order to qualify for training programs, together with information as to the types of programs for which such former enrollees were found unqualified for enrollment.

If the Secretary deems it advisable to utilize the services of any other public or private organization or agency in lieu of the public employment office, he shall arrange for that organization or agency to make the payment of the readjustment allowance and maintain the same types of records regarding former enrollees as are herein specified for maintenance by public employment service offices, and shall furnish copies of such records to the Secretary. In the case of enrollees who are placed in jobs by the Secretary prior to the termination of their participation in the Job Corps, the Secretary shall maintain records providing pertinent placement and follow-up information. (Pub. L. 93–203, title IV, § 412, Dec. 28, 1973, 87 Stat. 869.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 923. Evaluation; experimental and developmental projects.

(a) Publication of evaluation results; inclusion of summary in annual report.

The Secretary shall provide for the careful and systematic evaluation of the Job Corps program, directly or by contracting for independent evaluations, with a view to measuring specific benefits, so far as practicable, and providing information needed to assess the effectiveness of program procedures, policies, and methods of operation. In particular, this evaluation shall seek to determine the costs and benefits resulting from the use of residential as opposed to nonresidential facilities, from the use of facilities combining residential and nonresidential components, from the use of centers with large as opposed to small enrollments, and from the use of different types of program sponsors, including public agencies, institutions of higher education, boards of education, and private corporations. The evaluation shall also include comparisons with proper control groups composed of persons who have not participated in the program. In carrying out such evaluations, the Secretary shall arrange for obtaining the opinions of participants about the strengths and weaknesses of the program and shall consult with other agencies and officials in order to compare the relative effectiveness of Job Corps techniques with those used in other programs, and shall endeavor to secure, through employers, schools, or other Government and private agencies specific information concerning the residence of former enrollees, their employment status, compensation, and success in adjusting to community life. The Secretary shall also secure, to the extent feasible, similar information directly from enrollees at appropriate intervals following their completion of the Job Corps program. The results of such evaluation shall be published and shall be summarized in the annual report of the Secretary.

(b) Grants or contracts; pilot projects; consultation with other Federal or State agencies; waiver; report to Secretary and Congress.

The Secretary may undertake or make grants or contracts for experimental, research, or demonstration projects directed to developing or testing ways of securing the better use of facilities, of encouraging a more rapid adjustment of enrollees to community life that will permit a reduction in the period of their enrollment, of reducing transportation and support costs, or of otherwise promoting greater efficiency and effectiveness in the program authorized under this subchapter. These projects shall include one or more projects providing youths with education, training, and other supportive services on a combined residential and nonresidential basis. The Secretary may, if he deems it advisable, undertake one or more pilot projects designed to involve youth who have a history of serious and violent behavior against persons or property, repetitive delinquent acts, narcotics addiction, or other behavioral aberrations. Projects under this subsection shall be developed after appropriate consultation with other Federal or State agencies conducting similar or related programs or projects and with the prime sponsors, in the communities where the projects will be carried out. They may be undertaken jointly with other Federal or federally assisted programs, and funds otherwise available for activities under those programs shall, with the consent of the head of any agency concerned, be available to projects under this section to the extent they include the same or substantially similar activities. The Secretary may waive any provision of this subchapter which he finds would prevent the carrying out of elements of projects under this subsection essential to a determination of their feasibility and usefulness. He shall, in the annual report of the Secretary, report to the Congress concerning the actions taken under this section, including a full description of progress made in connection with combined residential and nonresidential projects.

(c) Model community vocational educational schools.

In order to determine whether upgraded vocational education schools could eliminate or substantially reduce the school dropout problem, and to demonstrate how communities could make maximum utilization of existing educational and training facilities, the Secretary in cooperation with the Commissioner of Education, shall enter into one or more agreements with State educational agencies to pay the cost of establishing and operating model community vocational education schools and skill centers. Such facilities shall be centrally located in an urban area having a high dropout rate, a large number of unemployed youths, and a need in the area for a combination vocational school and skill center. No such agreement shall be entered into unless it contains provisions designed to assure that—

(1) a job survey be made of the area;

(2) the training program of the school and skill center reflect the job market needs as projected by the survey;

(3) an advisory committee composed of representatives of business, labor, education, and community leaders be formed to follow the center's activities and to make periodic recommendations regarding its operation;

(4) arrangements have been worked out with schools in the area and the administrator of the skill center for maximum utilization of the center both during and after school hours; and

(5) such accounting and evaluation procedures as the Secretary and the Commissioner of Education deem necessary to carry out the purpose of this project will be provided.

(Pub. L. 93–203, title IV, § 413, Dec. 28, 1973, 87 Stat. 870.)

CODIFICATION

The phrase "program authorized under this subchapter," appearing in subsec. (b), was, in the original, "program authorized under this part." The translation of "part" to "subchapter" was made as the probable intent of Congress in view of the fact that subchapter IV of this chapter, of which this section is a part, is not further subdivided into parts.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 924. Advisory boards and committees.

The Secretary shall make use of advisory committees or boards in connection with the operation of the Job Corps, and the operation of Job Corps centers, whenever he determines that the availability of outside advice and counsel on a regular basis would be of substantial benefit in identifying and overcoming problems, in planning program or center development, or in strengthening relationships between the Job Corps and agencies, institutions, or groups engaged in related activities. Nothing in this section shall be considered as limiting the functions of the National Advisory Council, established pursuant to section 2945 of Title 42, with respect to any matter or question involving the Job Corps; but this shall not prevent the establishment through or in cooperation with the National Advisory Council of one or more boards or committees under this section. (Pub. L. 93–203, title IV, § 414, Dec. 28, 1973, 87 Stat. 871.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 925. Participation of the States.

(a) The Secretary shall take necessary action to facilitate the effective participation of States in the Job Corps program, including, but not limited to, consultation with appropriate State agencies on matters pertaining to the enforcement of applicable State laws, standards of enrollee conduct and discipline, the development of meaningful work experience and other activities for enrollees, and coordination with State-operated programs.

(b) The Secretary may enter into agreements with States to assist in the operation or administration of State-operated programs which carry out the purpose of this subchapter. The Secretary may, pursuant to regulations, pay part or all of the operative or administrative costs of such programs.

(c) No Job Corps center or other similar facility designed to carry out the purpose of this chapter shall be established within a State unless a plan setting forth such proposed establishment has been submitted to the Governor, and such plan has not been disapproved by him within 30 days of such submission. (Pub. L. 93–203, title IV, § 415, Dec. 28, 1973, 87 Stat. 871.)

CODIFICATION

The phrase "carry out the purpose of this subchapter," appearing in subsec. (b), was, in the original, "carry out the purpose of this part." The translation of "part" to "subchapter" was made as the probable intent of Congress in view of the fact that subchapter IV of this chapter, of which this section is a part, is not further subdivided into parts.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 926. Application of provisions of Federal law.

(a) Except as otherwise specifically provided in the following paragraphs of this subsection, and in section 8143(a) of Title 5, enrollees in the Job Corps shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment including those regarding hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits:

(1) For purposes of the Internal Revenue Code of 1954 and title II of the Social Security Act, enrollees shall be deemed employees of the United States and any service performed by an individual as an enrollee shall be deemed to be performed in the employ of the United States.

(2) For purposes of subchapter I of chapter 81 of Title 5 (relating to compensation to Federal employees for work injuries), enrollees shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of Title 5, and the provisions of that subchapter shall apply except as follows:

(A) The term "performance of duty" shall not include any act of an enrollee while absent from his or her assigned post of duty, except while participating in an activity (including an activity while on pass or during travel to or from such post of duty) authorized by or under the direction and supervision of the Job Corps;

(B) In computing compensation benefits for disability or death, the monthly pay of an enrollee shall be deemed that received under the entrance salary for a grade GS–2 employee, and sections 8113 (a) and (b) of Title 5 shall apply to enrollees; and

(C) Compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee is terminated.

(3) For purposes of the Federal tort claims provisions in Title 28 enrollees shall be considered employees of the Government.

(b) Whenever the Secretary finds a claim for damage to persons or property resulting from the operation of the Job Corps to be a proper charge against the United States, and it is not cognizable under section 2672 of Title 28 he may adjust and settle it in an amount not exceeding $500.

(c) Personnel of the uniformed services who are detailed or assigned to duty in the performance of agreements made by the Secretary for the support of the Corps shall not be counted in computing strength under any law limiting the strength of such services or in computing the percentage authorized by law for any grade therein. (Pub. L. 93–203, title IV, § 416, Dec. 28, 1973, 87 Stat. 872.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (a)(1), is set out in Title 26, Internal Revenue Code.

Title II of the Social Security Act, referred to in subsec. (a)(1), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

Grade GS–2, referred to in subsec. (a)(2)(B), is contained in the General Schedule set out under section 5332 of Title 5, Government Organization and Employees.

The Federal tort claims provisions in Title 28, referred to in subsec. (a)(3), are set out in section 2671 et seq. of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 927. Special limitations.

(a) The Secretary shall not use any funds made available to carry out this subchapter for the fiscal year ending June 30, 1968, in a manner that will increase the residential capacity of Job Corps centers above forty-five thousand enrollees.

(b) The Secretary shall take necessary action to assure that on or before June 30, 1968, of the total number of Job Corps enrollees receiving training at least 25 per centum shall be women. The Secretary shall immediately take steps to achieve an enrollment ratio of 50 per centum women enrollees in training in the Job Corps consistent with (1) efficiency and economy in the operation of the program, (2) sound administrative practice, and (3) the socioeconomic, educational, and training needs of the population to be served.

(c) The Secretary shall take necessary action to assure that for any fiscal year the direct operating costs of Job Corps centers which have been in operation for more than nine months do not exceed $6,900 per enrollee.

(d) The Secretary shall take necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds in the course of the operation of any conservation or training center shall become the property of the United States. (Pub. L. 93–203, title IV, § 417, Dec. 28, 1973, 87 Stat. 873.)

CODIFICATION

The phrase "available to carry out this subchapter", appearing in subsec. (a), was, in the original, "available to carry out this part". The translation of "part" to "subchapter" was made as the probable intent of Congress in view of the fact that subchapter IV of this chapter, of which this section is a part, is not further subdivided into parts.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 928. Political discrimination and political activity.

(a) No officer or employee of the executive branch of the Federal Government shall make any inquiry concerning the political affiliation or beliefs of any enrollee or applicant for enrollment in the Corps. All disclosures concerning such matters shall be ignored, except as to such membership in political parties or organizations as constitutes by law a disqualification for Government employment. No discrimination shall be exercised, threatened, or promised by any person in the executive branch of the Federal Government against or in favor of any enrollee in the Corps, or any applicant for enrollment in the Corps because of his political affiliation or beliefs, except as may be specifically authorized or required by law.

(b) No officer, employee or enrollee of the Corps shall take any active part in political management or in political campaigns, except as may be provided by or pursuant to statute, and no such officer, employee, or enrollee shall use his official position or influence for the purpose of interfering with an election or affecting the result thereof. All such persons shall retain the right to vote as they may choose and to express, in their private capacities, their opinions on all political subjects and candidates. Any officer, employee, enrollee, or other Federal employee who solicits funds for political purposes from members of the Corps shall be in violation of section 602 of Title 18.

(c) Whenever the United States Civil Service Commission finds that any person has violated the provisions of this section, it shall, after giving due notice and opportunity for explanation to the officer or employee or enrollee concerned certify the facts to the Secretary with specific instructions as to discipline or dismissal or other corrective actions. (Pub. L. 93–203, title IV, § 418, Dec. 28, 1973, 87 Stat. 873.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 929. Administrative provisions.

(a) In carrying out the provisions of this subchapter, the Secretary shall have the same powers as the Director of the Office of Economic Opportunity under section 2942 of Title 42.

(b) The provisions of section 983 of this title shall apply to this subchapter only to the extent that such provisions are consistent with the provisions of this subchapter. (Pub. L. 93–203, title IV, § 419, Dec. 28, 1973, 87 Stat. 873, amended Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–567 substituted "section 703" for "section 603" which for purposes of codification has been translated as "section 983."

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SUBCHAPTER V.—NATIONAL COMMISSION FOR MANPOWER POLICY

§ 951. Congressional findings and declaration of purpose.

(a) The Congress finds and declares that the responsibility for the development, administration, and coordination of programs of training and manpower development generally is so diffused and fragmented at all levels of government that it has been impossible to develop rational priorities in these fields, with the result that even good programs have proved to be far less effective than could reasonably be expected. The Congress further finds that the lack of a coherent, flexible, national manpower policy reduces our prospects of solving economic and social problems which threaten fundamental national interests and objectives.

(b) Accordingly, the purpose of this subchapter is to establish a National Commission for Manpower Policy which will have the responsibility for examining these issues, for suggesting ways and means of dealing with them, and for advising the Secretary on national manpower issues. (Pub. L. 93–203, title V, § 501, Dec. 28, 1973, 87 Stat. 874.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 952. Commission established.

(a) Membership.

There is established a National Commission for Manpower Policy (hereinafter referred to as the "Commission") which shall consist of seventeen members selected as follows—

(1) the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Defense, the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Veterans' Affairs; and

(2) eleven members broadly representative of labor, industry, commerce, education (including vocational and technical education), State and local elected officials involved with manpower programs, persons served by manpower programs and of the general public appointed by the President.

(b) Chairman; meetings.

The Commission shall meet at the call of the Chairman, who shall be selected by the President and who shall be one of the ten appointed public members, but not fewer than three times a year.

(c) Director; clerical staff; utilization of other staff.

The Chairman (with the concurrence of the Commission) shall appoint a Director, who shall be the chief executive officer of the Commission and shall perform such duties as are prescribed by the Chairman. The Director may appoint, with the concurrence of the Chairman and the Secretary of Labor, such clerical staff as are necessary. The Commission may utilize such staff from the Department of Labor, the Department of Health, Education, and Welfare, and such other Federal agencies as may be available to assist the Commission in carrying out its responsibilities.

(d) Acceptance, employment, and disposal of gifts and bequests.

The Commission may accept in the name of the Department of Labor and employ or dispose of gifts or bequests, to carry out its responsibilities under this subchapter.

(e) Compensation.

Members of the Commission who are not officers or employees of the Federal Government shall be paid compensation at a rate of up to the per diem equivalent of the rate for GS–18 when engaged in the work of the Commission, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by section 5703 of Title 5 for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis. (Pub. L. 93–203, title V, § 502, Dec. 28, 1973, 87 Stat. 874.)

REFERENCE IN TEXT

GS–18, referred to in subsec. (e), is a grade of the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 953. Functions of the Commission.

The Commission shall—

(1) identify the manpower goals and needs of the Nation and assess the extent to which employment and training, vocational education, institutional training, vocational rehabilitation, economic opportunity, and other programs under this chapter and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs and achieving such goals;

(2) conduct such studies, hearings, research, or other activities as it deems necessary to enable it to formulate appropriate recommendations;

(3) examine and evaluate the effectiveness of any federally assisted manpower development programs (including those assisted under this chapter), with particular reference to the contributions of such programs to the achievement of objectives sought by the recommendations under clause (2) of this section;

(4) examine and evaluate major Federal programs which are intended to (or potentially could) contribute to achieving major objectives of existing manpower and related legislation or those set forth in the recommendations of the Commission and particularly the programs which are designed (or could be designed) to develop information and knowledge about manpower problems through research and demonstration projects or to train personnel in fields (such as occupational counseling, guidance, and placement) which are vital to the success of manpower programs; and

(5) evaluate and make recommendations to the Congress with respect to the report of the Secretary required under section 956 of this title, and continue to make studies of the impact of energy shortages upon manpower needs and include these findings and recommendations with respect thereto in the reports required by section 955 of this title. (Pub. L. 93–203, title V, § 503, Dec. 28, 1973, 87 Stat. 875.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 954. Coordination study; report by January 31, 1975.

The Commission shall conduct a study of the utilization and interrelation of programs of manpower training with closely associated programs such as those conducted under the Wagner-Peyser Act, the work incentives program under part C of title IV of the Social Security Act, and others of similar nature, with a view to determining how they could be better coordinated and more effectively combined to serve individuals, particularly at the State and local levels, and shall make a report of their findings and recommendations to the President and the Congress not later than January 31, 1975. (Pub. L. 93–203, title V, § 504, Dec. 28, 1973, 87 Stat. 875.)

REFERENCES IN TEXT

The Wagner-Peyser Act, referred to in text, is classified to section 49 et seq. of this title.

Part C of title IV of the Social Security Act, referred to in text, is classified to section 630 et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 955. Reports to President and Congress.

The Commission shall make at least annually a report of its findings and recommendations to the President and the Congress, and the first such report shall be transmitted not later than September 1, 1974. The Commission may make such interim reports or recommendations to the Secretary of Labor or to the heads of other Federal departments and agencies, and in such form, as it may deem desirable. (Pub. L. 93–203, title V, § 505, Dec. 28, 1973, 87 Stat. 875.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 953 of this title.

§ 956. Energy study; report by March 31, 1974.

The Secretary shall, immediately upon enactment of this chapter, make a study of the impact of energy shortages, including fuel rationing, upon manpower needs. The Secretary shall make a report of his findings and recommendations thereon to the Congress and to the Commission not later than March 31, 1974. (Pub. L. 93–203, title V, § 506, Dec. 28, 1973, 87 Stat. 876.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 953 of this title.

SUBCHAPTER VI.—EMERGENCY JOB PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 42 section 3056a.

§ 961. Authorization of appropriations.

There are authorized to be appropriated $2,500,000,000 for fiscal year 1975 for carrying out the provisions of this subchapter. Any amounts so appropriated for such fiscal year which are not obligated prior to the end of such fiscal year shall remain available for obligation until December 31, 1975. (Pub. L. 93–203, title VI, § 601, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

SHORT TITLE

Section 1 of Pub. L. 93–567 provided: "That this Act [which enacted this subchapter and sections 3246 to 3246g of Title 42, amended sections 841, 842, 844, 845, 849–851, 981, and 983 of this title and section 1244(a) of Title 20, and enacted provisions set out as notes under sections 3304 of Title 26 and 2002 of Title 38] may be cited as the 'Emergency Jobs and Unemployment Assistance Act of 1974'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 963 of this title.

§ 962. Financial assistance.

(a) Transitional employment.

The Secretary shall enter into arrangements with eligible applicants in accordance with the provisions of this subchapter in order to make financial assistance available for the purpose of providing transitional employment for unemployed and underemployed persons in jobs providing needed public services, and training and manpower services related to such employment which are otherwise unavailable, and enabling such persons to move into employment not supported under this chapter.

(b) Percentage of funds for expenditure for wages and employment benefits.

Not less than 90 per centum of the funds appropriated pursuant to this subchapter which are used by an eligible applicant for public service employment programs shall be expended only for wages and employment benefits to persons employed in public service jobs pursuant to this subchapter.

(c) Subchapter II provisions applicable.

The provisions of section 844(d) and sections 845 through 851 of this title shall apply to financial assistance under this subchapter.

(d) Preferred consideration of certain unemployed persons.

In filling public service jobs with financial assistance under this subchapter, eligible applicants shall give preferred consideration, to the maximum extent feasible and consistent with other provisions of this chapter to unemployed persons who have exhausted unemployment insurance benefits, to unemployed persons who are not eligible for unemployment insurance benefits (except for persons lacking work experience), and to unemployed persons who have been unemployed for fifteen or more weeks.

(e) "Eligible applicants" defined.

For purposes of this section, the term "eligible applicants" means prime sponsors qualified under subchapter I of this chapter and Indian tribes on Federal or State reservations. (Pub. L. 93–203, title VI, § 602, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 963, 964 of this title.

§ 963. Allotment of funds.

(a) Allocation based upon unemployment, substantial unemployment, and relative excess number of unemployed; "excess number" defined.

(1) Not less than 90 per centum of the amounts appropriated under section 961 of this title for any fiscal year shall be allotted among eligible applicants by the Secretary in accordance with the provisions of this subsection.

(2)(A) Fifty per centum of the amount allotted under this subsection shall be allotted among eligible applicants in proportion to the relative number of unemployed persons who reside in areas within the jurisdiction of each such applicant as compared to the number of unemployed persons who reside in all such areas in all the States.

(B) Twenty-five per centum of the amount allotted under this subsection shall be allotted among eligible applicants in accordance with the number of unemployed persons residing in areas of substantial unemployment (as defined in section 844(c) of this title) within the jurisdiction of the applicant compared to the number of unemployed persons residing in all such areas.

(C) Twenty-five per centum of the amount allotted under this subsection shall be allotted among eligible applicants on the basis of the relative excess number of unemployed persons who reside within the jurisdiction of the applicant as compared to the total excess number of unemployed persons who reside within the jurisdiction of all eligible applicants. For purposes of this subparagraph, the term "excess number" means (i) the number which represents unemployed persons in excess of 4½ per centum of the labor force in the jurisdiction of the applicant in whose jurisdiction such persons reside or (ii), in the case of an applicant which is a State, the term "excess number" means such number as defined in clause (i) or the number which represents unemployed persons in excess of 4½ per centum of the labor force in areas eligible for assistance under subchapter II of this chapter located in the geographical area served by such State prime sponsor under subchapter I or II of this chapter, whichever is greater.

(b) Amount available as Secretary deems appropriate.

The remainder of the amount appropriated under section 961 of this title shall be available to the Sec-

retary for financial assistance under section 962 of this title as the Secretary deems appropriate to carry out the purposes of this subchapter, taking into account changes in rates of unemployment.

(c) "Jurisdiction" defined.

For purposes of determining allocations under this section, the term "jurisdiction" includes the jurisdiction of each unit of general local government as described in section 812(a)(2) of this title whether or not such unit has entered into a combination of units of general local government for purposes of section 812(a)(3) or section 812(a)(4) of this title. (Pub. L. 93–203, title VI, § 603, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 964 of this title.

§ 964. Special provision for areas of excessively high unemployment and for expansion of job opportunities.

(a) Job opportunities under section 874(a)(3) to (6) programs.

Funds allocated from appropriations for carrying out this subchapter to any eligible applicant, which certifies to the Secretary that the application of the provisions of this section is necessary in order to provide sufficient job opportunities in the area served by such eligible applicant, may be used for making payments to public employers to expand the provision of job opportunities of the type described in paragraphs (3), (4), (5), and (6) of section 874(a) of this title.

(b) Public service employment programs; programs for persons unemployed 15 days; community capital improvement projects.

In accordance with the provisions of subsection (c) of this section, and notwithstanding the provisions of sections 962 (a) and (b) of this title, funds allotted under section 963 of this title to eligible applicants may be used for—

(1) public service employment programs without regard to the provisions of section 845(b), 845(c)(4), 845(c)(6), 845(c)(16), 845(c)(19), and 848(a)(6) of this title.

(2) providing employment for persons who have been unemployed for at least 15 days without regard to the provision of section 845(a) of this title relating to 30 days of unemployment, if the applicant certifies that the hiring of an individual will not violate the provisions of section 845(c)(8) of this title.

(3) payment of wages (at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act, as amended (sections 276a–276a–5 of Title 40), for unemployed and underemployed persons as employees of public employers in jobs on community capital improvement projects which would not otherwise be carried out, including the rehabilitation, alteration, or improvement of public buildings, roads and other public transportation facilities, health and education facilities, and other facilities for the improvement of the community in which the project is or will be located, and including construction, rehabilitation, alteration, or improvement of water and waste disposal facilities in communities having populations of 10,000 individuals or less which are outside the boundaries of a Standard Metropolitan Statistical Area (as defined by the Bureau of the Census).

(c) Unemployment areas eligible for subsection (b) programs.

The provisions of subsection (b) of this section shall apply to any area having an unemployment rate in excess of 7 per centum, and to any area, without regard to the rate of unemployment of such area, if such area is served by a prime sponsor which qualifies under section 812(a)(4) or section 812(a)(5) of this title or is in an area which is eligible for assistance under subchapter II of this chapter and which is served by a State prime sponsor, and if the prime sponsor for such area certifies to the Secretary that the application of such provisions is necessary in order to provide sufficient job opportunities, and gives public notice of such certification. (Pub. 93–203, title VI, § 604, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1846.)

§ 965. Expenditure of funds.

Funds obligated for the purposes of providing public service employment under this subchapter may be utilized by prime sponsors for projects and activities planned to extend over a twelve-month period from the commencement of any such project or activity. (Pub. L. 93–203, title VI, § 605, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1847.)

§ 966. Reallocation of funds; publication in Federal Register.

The Secretary is authorized to make such reallocations as he deems appropriate of any amount of any allocation under this subchapter to the extent that the Secretary determines that an eligible applicant will not be able to use such amount within a reasonable period of time. Any such amount may be reallocated only if the Secretary has provided thirty days' advance notice to the prime sponsor for such area and to the Governor of the State of the proposed reallocation, during which period of time the prime sponsor and the Governor may submit comments to the Secretary. After considering any comments submitted during such period of time, the Secretary shall notify the Governor and affected prime sponsors of any decision to reallocate funds, and shall publish any such decision in the Federal Register. Any such funds shall be reallocated to other areas within the same State. (Pub. L. 93–203, title VI, § 606, as added Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1847.)

SUBCHAPTER VII.—GENERAL PROVISIONS

§ 981. Definitions.

(a) As used in this chapter, the term—

(1) "Community-based organizations" means organizations which are representative of communities or significant segments of the communities and which provide manpower services (for example, Opportunities Industrialization Centers, Jobs for Progress, Mainstream, and Community Action Agencies).

(2) "Governor" means the chief executive of any State.

(3) "Health care" includes, but is not limited to, preventive and clinical medical treatment, family planning services, nutrition services, and appropriate psychiatric, psychological, and prosthetic services, to the extent any such treatment or services are necessary to enable the recipient of manpower services to obtain or retain employment.

(4) "Low-income level" means $7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship to $7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest $1,000.

(5) "Manpower allotment" means sums received by a State or area under subchapter I of this chapter for any fiscal year (or, where applicable, under title II of the Manpower Development and Training Act of 1962, and part B of title I of the Economic Opportunity Act of 1964).

(6) "Offender" means any adult or juvenile who is confined in any type of correctional institution and also includes any individual or juvenile assigned to a community based facility or subject to pretrial, probationary, or parole or other stages of the judicial correctional or probationary process where manpower training and services may be beneficial, as determined by the Secretary, after consultation with judicial, correctional, probationary, or other appropriate authorities.

(7) "Public service" includes, but is not limited to, work, including part-time work for individuals who are unable, because of age, handicap, or other factors, to work full time, in such fields as environmental quality, health care, education, child care, public safety, crime prevention and control, prison rehabilitation, transportation, recreation, maintenance of parks, streets, and other public facilities, solid waste removal, pollution control, housing and neighborhood improvements, rural development, conservation, beautification, veterans outreach, and other fields of human betterment and community improvement.

(8) "Secretary" means the Secretary of Labor.

(9) "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(10) "Unit of general local government" means any city, municipality, county, town, township, parish, village or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers.

(11) "Underemployed persons" means—

(A) persons who are working part-time but seeking full-time work;

(B) persons who are working full-time but receiving wages below the poverty level determined in accordance with criteria as established by the Director of the Office of Management and Budget.

(12) "Unemployed persons" means—

(A) persons who are without jobs and who want and are available for work; and

(B) except for purposes of sections 813 and 842 of this title, adults who or whose families receive supplemental security income or money payments pursuant to a State plan approved under title I, IV, X, or XVI of the Social Security Act or would, as defined in regulations to be issued by the Secretary, be eligible for such payments but for the fact that both parents are present in the home (1) who are determined by the Secretary of Labor, in consultation with the Secretary of Health, Education, and Welfare, to be available for work, and (2) who are either (i) persons without jobs, or (ii) persons working in jobs providing insufficient income to enable such persons and their families to be self-supporting without welfare assistance;

and the determination of whether persons are without jobs shall be made in accordance with the criteria used by the Bureau of Labor Statistics of the Department of Labor in defining persons as unemployed, but such criteria shall not be applied differently on account of a person's previous employment.

(13) "Wagner-Peyser Act" means "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113), as amended.

(14) "veterans outreach" means the veterans outreach services program carried out under subchapter IV of chapter 3 of Title 38 with full utilization of veterans receiving educational assistance or vocational rehabilitation under chapter 31 or 34 of such Title 38.

(b) As used in section 848(c) of this title, the term "area" means—

(1) where the applicant is an eligible unit of government or an Indian tribe, that geographical area over which the applicant exercises general political jurisdiction, or

(2) where the applicant is a public agency or institution which is a subdivision of an eligible unit of government, that geographical area over which such unit of government exercises general political jurisdiction.

(Pub. L. 93–203, title VII, § 701, formerly title VI, § 601, Dec. 28, 1973, 87 Stat. 876, renumbered and amended Pub. L. 93–567, title I, §§ 101, 107(a)–(c), Dec. 31, 1974, 88 Stat. 1845, 1849.)

REFERENCES IN TEXT

Title II of the Manpower Development and Training Act of 1962, referred to in par. (5), is one of this chapter's predecessor provisions and, prior to its repeal, was set out in section 2581 et seq. of Title 42, The Public Health and Welfare.

Part B of title I of the Economic Opportunity Act of 1964, referred to in par. (5), is one of this chapters predecessor provisions and, prior to its repeal, was set out in section 2731 et seq. of Title 42.

Titles I, IV, X, or XVI of the Social Security Act, referred to in par. (12)(A), are classified to sections 301 et seq., 601 et seq., 1201 et seq., and 1381 et seq. of Title 42.

The Wagner-Peyser Act, referred to in par. (13), is classified to section 49 et seq. of this title.

AMENDMENTS

1974—Subsec. (a)(7). Pub. L. 93–567, § 107(a), (b), defined "public service" to include child care and part-time work for individuals who are unable because of age, handicap, or other factors to work full time.

Subsec. (a)(14). Pub. L. 93–567, § 107(c), added par. (14).

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 982. Legal authority.

(a) The Secretary may, in accordance with chapter 5 of Title 5, prescribe such rules, regulations, guidelines, and other published interpretations under this chapter as he deems necessary. Rules, regulations, guidelines and other published interpretations or orders may include adjustments authorized by section 4214 of Title 42. For purposes of chapter 5 of Title 5 any condition or guideline for receipt of financial assistance shall be deemed a rule to which section 553 of Title 5 applies. All such rules, regulations, guidelines, and other published interpretations or orders under this chapter shall be published in the Federal Register at least thirty days prior to their effective date. Copies of all such rules, regulations, guidelines, and other published interpretations or orders shall be transmitted to the appropriate committees of the Congress at the same time and shall contain with respect to each material provision of such rules, regulations, guidelines, and other published interpretations or orders, citations to the particular substantive section of law which is the basis therefor.

(b) The Secretary may make such grants, contracts, or agreements, establish such procedures (subject to such policies, rules, and regulations as he may prescribe), and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this chapter, as he may deem necessary to carry out the provisions of this chapter, including (without regard to the provisions of section 4774(d) of Title 10) expenditures for construction, repairs, and capital improvements, and including necessary adjustments in payments on account of overpayments or underpayments. The Secretary may also withhold funds otherwise payable under this chapter, but only in order to recover any amounts expended in the current or immediately prior fiscal year in violation of any provision of this chapter or any term or condition of assistance under this chapter. (Pub. L. 93–203, title VII, § 702, formerly title VI, § 602, Dec. 28, 1973, 87 Stat. 877, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 983. Conditions applicable to all programs.

The Secretary shall not provide financial assistance for any program under this chapter unless—

(1) the grant, contract, or agreement with respect thereto specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program participant or any applicant for participation in such program because of race, creed, color, national origin, sex, age, political affiliation, or beliefs;

(2) such program does not involve political activities;

(3) participants in the program will not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship;

(4) conditions of employment or training will be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant;

(5) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on any project are established and will be maintained;

(6) appropriate workmen's compensation protection will be provided to all participants;

(7) the program will not result in the displacement of employed workers or impair existing contracts for services or result in the substitution of Federal for other funds in connection with work that would otherwise be performed;

(8) persons shall not be referred for training in an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities available in that occupation;

(9) training and related services under any such program are designed, to the maximum extent practicable, consistent with every individual's fullest capabilities, to lead to employment opportunities enabling participants to become economically self-sufficient;

(10) no person shall be referred for training authorized under paragraph (3) or (4) of section 811 of this title unless the Secretary or the prime sponsor, as appropriate, shall have determined that there is a reasonable expectation of employment for such person in the occupation for which he is being trained;

(11) funds will be used to supplement, to the extent practicable, the level of funds that would otherwise be made available from non-Federal sources for the purpose of planning and administration of programs within the scope of this chapter and not to supplant such other funds;

(12) the applicant will make such reports, in such form and containing such information as the Secretary may from time to time require, and will keep such records and afford such access thereto as the Secretary may find necessary to assure that funds are being expended in accordance with the provisions of this chapter;

(13) the program will, to the maximum extent feasible, contribute to the occupational development or upward mobility of individual participants;

(14) the program has adequate internal administrative controls, accounting requirements, personnel standards, evaluation procedures, availability of inservice training and technical assistance programs, and other policies as may be necessary to promote the effective use of funds; and

(15) the program makes appropriate provision for the manpower needs of youths in the area to be served.

(Pub. L. 93–203, title VII, § 703, formerly title VI, § 603, Dec. 28, 1973, 87 Stat. 878, renumbered and

amended Pub. L. 93–567, title I, §§ 101, 107(d), Dec. 31, 1974, 88 Stat. 1845, 1849.)

AMENDMENTS

1974—Par. (1). Pub. L. 93–567 required provision against age discrimination.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 818, 929 of this title.

§ 984. Special limitations.

(a) No authority conferred by this chapter shall be used to enter into arrangements for, or otherwise establish, any training programs in the lower wage industries in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high, or to assist in relocating establishments from one area to another. Such limitations on relocation shall not prohibit assistance to a business entity in the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary of Labor finds that assistance will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations, unless he has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(b) Acceptance of family planning services provided to trainees shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to eligibility for or receipt of any benefit under the program.

(c) No non-governmental individual, institution, or organization shall evaluate any program under this chapter if that individual or such institution or organization is associated with that program as a consultant, technical adviser, or in any similar capacity. (Pub. L. 93–203, title VII, § 704, formerly title VI, § 604, Dec. 28, 1973, 87 Stat. 879, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 818 of this title.

§ 985. Reports.

(a) The Secretary shall make such reports and recommendations to the President as he deems appropriate pertaining to employment and occupational requirements, resources, use, and training, and his recommendations for the succeeding fiscal year, and the President shall transmit to the Congress within sixty days after the beginning of each regular session a report pertaining to manpower requirements, resources, utilization, and training.

(b) The Secretary and the Secretary of Health, Education, and Welfare shall report to the Congress on the extent to which community colleges, area vocational and technical schools and other vocational educational agencies and institutions, and vocational rehabilitation agencies are being utilized to carry out training programs supported in whole or in part from provisions of this chapter and related Acts, the extent to which administrative steps have been taken and are being taken to encourage the use of such facilities and institutions and agencies in the carrying out of the provisions of this chapter and any further legislation that may be required to assure effective cooordination and utilization of such facilities and agencies to the end that all federally supported employment and training, vocational education, and vocational rehabilitation programs can more effectively accomplish their objectives of providing employment and training opportunities to all persons needing occupational training.

(c) The Secretary shall transmit to the Congress at the earliest appropriate date, but not later than March 1, of each calendar year a report setting forth a description of summer programs providing jobs for economically disadvantaged youth to begin in June of such year, including the number of opportunities in public and private agencies or organizations that will be provided under section 874 (a)(3) of this title or in the case of the summer of 1974 under transitional provisions spelled out in section 3(c) of Public Law 93–203, and a statement as to the total number of such persons who would be eligible for such programs, together with his recommendations, if any, for supplemental appropriations for such programs.

(d) The Secretary, through the Bureau of Labor Statistics, shall annually compile and maintain information on the incidence of unemployment among offenders and shall publish the results of the information obtained pursuant to this subsection in the report required under subsection (a) of this section.

(e) The Chairman of the United States Civil Service Commission, in consultation with the Secretary, shall report to the President and to the Congress no later than six months after December 28, 1973, on the extent to which and manner in which employment opportunities for offenders may be increased in the Federal service, with special reference to the criteria used in determining the suitability of offenders for Federal employment, including such recommendations for additional legislation as they deem advisable.

(f) Each prime sponsor shall prepare for the Secretary, and make available, to the public, a report on its activities under the chapter, including a detailed comparison of program performance with approved plan. (Pub. L. 93–203, title VII, § 705, formerly title VI, § 605, Dec. 28, 1973, 87 Stat. 879, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

REFERENCES IN TEXT

In subsec. (c), phrase "in the case of the summer of 1974 under transitional provisions spelled out in section 3(c) of Public Law 93–203" was, in the original, "in the case of the summer of 1974 under section 3(c)". Section 3 of Pub. L. 93–203 is set out as a note under section 801 of this title.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 986. Labor standards.

All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating of projects, buildings, and works which are federally assisted under this chapter, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary in accordance with the Davis-Bacon Act, as amended. The Secretary shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40. (Pub. L. 93–203, title VII, § 706, formerly title VI, § 606, Dec. 28, 1973, 87 Stat. 880, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in text, is classified to section 276a to 276a–5 of Title 40, Public Buildings, Property, and Works.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 987. Acceptance of gifts.

The Secretary is authorized, in carrying out his functions and responsibilities under this chapter, to accept in the name of the Department, and employ or dispose of in furtherance of the purposes of this chapter, or any subchapter thereof, an unconditional gift of any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and to accept voluntary and uncompensated services, notwithstanding the provisions of section 665b of Title 31. (Pub. L. 93–203, title VII, § 707, formerly title VI, § 607, Dec. 28, 1973, 87 Stat. 880, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 988. Utilization of services and facilities.

(a) In addition to such other authority as he may have, the Secretary is authorized, in the performance of his functions under this chapter, and to the extent permitted by law, to utilize the services and facilities of departments, agencies, and establishments of the United States. The Secretary is also authorized to accept and utilize the services and facilities of the agencies of any State or political subdivision of a State, with their consent.

(b) The Secretary shall carry out his responsibilities under this chapter through the utilization, to the extent appropriate, of all resources for skill development available in industry, labor, public and private educational and training institutions, vocational rehabilitation agencies, and other State, Federal, and local agencies, and other appropriate public and private organizations and facilities, with their consent. (Pub. L. 93–203, title VII, § 708, formerly title VI, § 608, Dec. 28, 1973, 87 Stat. 881, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 989. Interstate agreements.

In the event that compliance with provisions of this chapter would be enhanced by cooperative agreements between States, the consent of Congress is hereby given to such States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary. (Pub. L. 93–203, title VII, § 709, formerly, title VI, § 609, Dec. 28, 1973, 87 Stat. 881, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1945.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 990. Political activities prohibited.

The Secretary shall not provide financial assistance for any program under this chapter which involves political activities; and neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be, in any way or to any extent, engaged in the conduct of political activities in contravention of chapter 15 of Title 5. (Pub. L. 93–203, title VII, § 710, formerly title VI, § 610, Dec. 28, 1973, 87 Stat. 881, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

§ 991. Nondiscrimination.

(a) No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter.

(b) Whenever the Secretary determines that a prime sponsor or eligible applicant has failed to comply with subsection (a) of this section or an applicable regulation, he shall notify the prime sponsor or eligible applicant of the noncompliance and shall request the prime sponsor or eligible applicant to secure compliance. If within a reasonable period of time, not to exceed sixty days, the prime sponsor or eligible applicant fails or refuses to secure compliance, the Secretary, in addition to exercising the powers and functions provided for the termination of financial assistance under this chapter, is authorized (1) to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; (2) to exercise the powers and functions provided by title VI of the Civil Rights Act of 1964; or (3) to take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b) of this section, or whenever he has reason to believe that a prime sponsor or eligible applicant is engaged in a pattern

or practice in violation of the provisions of this section, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(d) The Secretary shall enforce the provisions of subsection (a) of this section dealing with discrimination on the basis of sex in accordance with section 2000d–1 of Title 42. Section 2000d–2 of Title 42 shall apply with respect to any action taken by the Secretary to enforce such provisions of such subsection. This section shall not be construed as affecting any other legal remedy that a person may have if that person is excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any program or activity receiving assistance under this chapter. (Pub. L. 93–203, title VII, § 712, formerly title VI, § 612, Dec. 28, 1973, 87 Stat. 882, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1945.)

REFERENCES IN TEXT

Title VI of the Civil Rights Act of 1964, referred to in subsec. (b) is classified to section 2000d et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 818 of this title.

§ 992. Records, audits, and reports.

In order to assure that funds provided under this chapter are used in accordance with its provisions, each recipient shall—

(1) use such fiscal, audit, and accounting procedures as may be necessary to assure (A) proper accounting for payments received by it, and (B) proper disbursement of such payments;

(2) provide to the Secretary and the Comptroller General of the United States access to, and the right to examine, any books, documents, papers, or records as he requires; and

(3) make such reports to the Secretary or the Comptroller General of the United States as he requires.

(Pub. L. 93–203, title VII, § 713, formerly title VI, § 613, Dec. 28, 1973, 87 Stat. 882, renumbered Pub. L. 93–567, title I, § 101, Dec. 31, 1974, 88 Stat. 1845.)

EFFECTIVE DATE

Section effective Dec. 28, 1973, see section 615 of Pub. L. 93–203, set out as a note under section 801 of this title.

Chapter 18—EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM [NEW]

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 441 of this title; title 26 sections 401, 412.

SUBCHAPTER I.—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1201, 1202, 1203, 1343 of this title; title 18 sections 664, 1027, 1954; title 19 section 2373; title 26 section 6103.

SUBTITLE A.—GENERAL PROVISIONS

§ 1001. Congressional findings and declaration of policy.

(a) The Congress finds that the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well-being and security of millions of employees and their dependents are directly affected by these plans; that they are affected with a national public interest; that they have become an important factor affecting the stability of employment and the successful development of industrial relations; that they have become an important factor in commerce because of the interstate character of their activities, and of the activities of their participants, and the employers, employee organizations, and other entities by which they are established or maintained; that a large volume of the activities of such plans is carried on by means of the mails and instrumentalities of interstate commerce; that owing to the lack of employee information and adequate safeguards concerning their operation, it is desirable in the interests of employees and their beneficiaries, and to provide for the general welfare and the free flow of commerce, that disclosure be made and safeguards be provided with respect to the establishment, operation, and administration of such plans; that they substantially affect the revenues of the United States because they are afforded preferential Federal tax treatment; that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries, for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standards be provided assuring the equitable character of such plans and their financial soundness.

(b) It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

(c) It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance. (Pub. L. 93–406, title I, § 2, Sept. 2, 1974, 88 Stat. 832.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, Titles I, III and IV of which enacted this chapter. For additional classification of the Act to the Code, see Short Title note under this section.

SHORT TITLE

Section 1 of Pub. L. 93–406 provided that: "This Act [enacting this chapter, sections 408 to 415, 4971 to 4975, 6057 to 6059, 6692, and 6693 of Title 26, Internal Revenue Code, section 1037 of Title 31, Money and Finance, and section 1320b–1 of Title 42, The Public Health and Welfare, amending section 441 of this title, sections 5108 and 5109 of Title 5, Government Organization and Employees, sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, sections 37, 46, 56, 62, 72, 101, 122, 219, 220, 275, 401, 402, 403, 404, 405, 406, 407, 503, 801, 805, 871, 901, 1304, 1348, 1379, 2039, 3401, 6033, 6047, 6051, 6103, 6104, 6161, 6201, 6204, 6211, 6212, 6213, 6214, 6344, 6501, 6503, 6511, 6512, 6601, 6652, 6653, 6659, 6676, 6677, 6679, 6682, 6688, 6690, 6861, 6862, 7422, 7451, 7459, 7482, 7701, and

7802, of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance, repealing sections 301 to 309 of this title, and enacting provisions set out as notes under sections 72, 122, 219, 401, 402, 403, 404, 410, 411, 412, 415, 501, 4973, 4975, 6057, 6059, 6103, 6104, 7476, and 7802 of Title 26, Internal Revenue Code, may be cited as the 'Employee Retirement Income Security Act of 1974'."

§ 1002. Definitions.

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2) The terms "employee pension benefit plan" and "pension plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(3) The term "employee benefit plan" or "plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

(6) The term "employee" means any individual employed by an employer.

(7) The term "participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.

(8) The term "beneficiary" means a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.

(9) The term "person" means an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization.

(10) The term "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone. The term "United States" when used in the geographic sense means the States and the Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (sections 1331 to 1343 of Title 43).

(11) The term "commerce" means trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.

(12) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.

(13) The term "Secretary" means the Secretary of Labor.

(14) The term "party in interest" means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation.

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative (as defined in paragraph (15)) of any individual described in subparagraph (A), (B), (C), or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10 percent or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E), or (G), or of the employee benefit plan; or

(I) a 10 percent or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of the Treasury, may by regulation prescribe a percentage lower than 50 percent for subparagraph (E) and (G) and lower than 10 percent for subparagraph (H) or (I). The Secretary may prescribe regulations for determining the ownership (direct or indirect) of profits and beneficial interests, and the manner in which indirect stockholdings are taken into account.

(15) The term "relative" means a spouse, ancestor, lineal descendant, or spouse of a lineal descendant.

(16)(A) The term "administrator" means—

(i) the person specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor; or

(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

(B) The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(17) The term "separate account" means an account established or maintained by an insurance company under which income, gains, and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(18) The term "adequate consideration" when used in part 4 of subtitle B of this subchapter means (A) in the case of a security for which there is a generally recognized market, either (i) the price of the security prevailing on a national securities exchange which is registered under section 78f of Title 15, or (ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and (B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the trustee or named fiduciary pursuant to the terms of the plan and in accordance with regulations promulgated by the Secretary.

(19) The term "nonforfeitable" when used with respect to a pension benefit or right means a claim obtained by a participant or his beneficiary to that part of an immediate or deferred benefit under a pension plan which arises from the participant's service, which is unconditional, and which is legally enforceable against the plan. For purposes of this paragraph, a right to an accrued benefit derived from employer contributions shall not be treated as forfeitable merely because the plan contains a provision described in section 1053(a)(3) of this title.

(20) The term "security" has the same meaning as such term has under section 77b(1) of Title 15.

(21)(A) Except as otherwise provided in subparagraph (B), a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan. Such term includes any person designated under section 1105(c)(1)(B) of this title.

(B) If any money or other property of an employee benefit plan is invested in securities issued by an investment company registered under the Investment Company Act of 1940, such investment shall not by itself cause such investment company or such investment company's investment adviser or principal underwriter to be deemed to be a fiduciary or a party in interest as those terms are defined in this subchapter, except insofar as such investment company or its investment adviser or principal underwriter acts in connection with an employee benefit plan covering employees of the investment company, the investment adviser, or its principal underwriter. Nothing contained in this subparagraph shall limit the duties imposed on such investment company, investment adviser, or principal underwriter by any other law.

(22) The term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to—

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefit under the plan which the Secretary of the Treasury finds to be a benefit described in section 1054(b)(1)(G) of this title.

(23) The term "accrued benefit" means—

(A) in the case of a defined benefit plan, the individual's accrued benefit determined under the plan and, except as provided in section 1054(c)(3) of this title, expressed in the form of an annual benefit commencing at normal retirement age, or

(B) in the case of a plan which is an individual account plan, the balance of the individual's account.

(24) The term "normal retirement age" means the earlier of—

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of—

(i) the time a plan participant attains age 65, or

(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.

(25) The term "vested liabilities" means the present value of the immediate or deferred benefits available at normal retirement age for participants and their beneficiaries which are nonforfeitable.

(26) The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary (as defined in section 1102(a)(2) of this title) pursuant to the terms of the plan and in accordance with regulations of the Secretary, assuming an orderly liquidation at the time of such determination.

(27) The term "present value", with respect to a liability, means the value adjusted to reflect anticipated events. Such adjustments shall conform to such regulations as the Secretary of the Treasury may prescribe.

(28) The term "normal service cost" or "normal cost" means the annual cost of future pension benefits and administrative expenses assigned, under an actuarial cost method, to years subsequent to a particular valuation date of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(29) The term "accrued liability" means the excess of the present value, as of a particular valuation date of a pension plan, of the projected future benefit costs and administrative expenses for all plan participants and beneficiaries over the present value of future contributions for the normal cost of all applicable plan participants and beneficiaries. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(30) The term "unfunded accrued liability" means the excess of the accrued liability, under an actuarial cost method which so provides, over the present value of the assets of a pension plan. The Secretary of the Treasury may prescribe regulations to carry out this paragraph.

(31) The term "advance funding actuarial cost method" or "actuarial cost method" means a recognized actuarial technique utilized for establishing the amount and incidence of the annual actuarial cost of pension plan benefits and expenses. Acceptable actuarial cost methods shall include the accrued benefit cost method (unit credit method), the entry age normal cost method, the individual level premium cost method, the aggregate cost method, the attained age normal cost method, and the frozen initial liability cost method. The terminal funding cost method and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

(32) The term "governmental plan" means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935, or 1937 applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act.

(33)(A) The term "church plan" means (i) a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of Title 26, or (ii) a plan described in subparagraph (C).

(B) The term "church plan" (notwithstanding the provisions of subparagraph (A)) does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of Title 26), or

(ii) which is a plan maintained by more than one employer, if one or more of the employers in the plan is not a church (or a convention or association of churches) which is exempt from tax under section 501 of Title 26.

(C) Notwithstanding the provisions of subparagraph (B)(ii), a plan in existence on January 1, 1974, shall be treated as a "church plan" if it is established and maintained by a church or convention or association of churches for its employees and employees of one or more agencies of such church (or convention or association) for the employees of such church (or convention or association) and the employees of one or more agencies of such church (or convention or association), and if such church (or convention or association) and each such agency is exempt from tax under section 501 of Title 26. The first sentence of this subparagraph shall not apply to any plan maintained for employees of an agency with respect to which the plan was not maintained on January 1, 1974. The first sentence of this subparagraph shall not apply with respect to any plan for any plan year beginning December 31, 1982.

(34) The term "individual account plan" or "defined contribution plan" means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(35) The term "defined benefit plan" means a pension plan other than an individual account plan;

except that a pension plan which is not an individual account plan and which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant—

(A) for the purposes of section 1052 of this title, shall be treated as an individual account plan, and

(B) for the purposes of paragraph (23) of this section and section 1054 of this title, shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.

(36) The term "excess benefit plan" means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of Title 26 on plans to which that section applies without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

(37) (A) The term "multiemployer plan" means a plan—

(i) to which more than one employer is required to contribute,

(ii) which is maintained pursuant to one or more collective-bargaining agreements between an employee organization and more than one employer.

(iii) under which the amount of contributions made under the plan for a plan year by each employer making such contributions is less than 50 percent of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions.

(iv) under which benefits are payable with respect to each participant without regard to the cessation of contributions by the employer who had employed that participant except to the extent that such benefits accrued as a result of service with the employer before such employer was required to contribute to such plan, and

(v) which satisfies such other requirements as the Secretary may by regulations prescribe.

(B) For purposes of this paragraph—

(i) if a plan is a multiemployer plan within the meaning of subparagraph (A) for any plan year, clause (iii) of subparagraph (A) shall be applied by substituting "75 percent" or "50 percent" for each subsequent plan year until the first plan year following a plan year in which the plan had one employer who made contributions of 75 percent or more of the aggregate amount of contributions made under the plan for that plan year by all employers making such contributions, and

(ii) all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of Title 26, determined without regard to section 1563(e)(3)(C) of Title 26) shall be deemed to be one employer.

(38) The term "investment manager" means any fiduciary (other than a trustsee or named fiduciary, as defined in section 1102(a)(2) of this title)—

(A) who has the power to manage, acquire, or dispose of any asset of a plan;

(B) who is (i) registered as an investment adviser under the Investment Advisers Act of 1940; (ii) is a bank, as defined in that Act; or (iii) is an insurance company qualified to perform services described in subparagraph (A) under the laws of more than one State; and

(C) has acknowledged in writing that he is a fiduciary with respect to the plan.

(39) The terms "plan year" and "fiscal year of the plan" mean with respect to a plan, calendar, policy, or fiscal year on which the records of the plan are kept. (Pub. L. 93–406, title I, § 3, Sept. 2, 1974, 88 Stat. 833.)

REFERENCES IN TEXT

The Labor Management Relations Act, 1947, referred to in par. (12), is act June 23, 1947, ch. 120, 61 Stat. 136, which is classified to section 141 et seq. of this title.

The Railway Labor Act, referred to in par. (12), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified to section 151 et seq. of Title 45, Railroads.

The Investment Company Act of 1940, referred to in par. (21)(B), is act Aug. 22, 1940, ch. 686, title I, 54 Stat. 789, which is classified to section 80a–1 et seq. of Title 15, Commerce and Trade.

The Railroad Retirement Act of 1935, referred to in par. (32), was formerly classified to sections 215 to 228 of Title 45, Railroads, and is set out as a note under the former sections with provisions relating to continuation and effect of such Act upon the enactment of the Railroad Retirement Act of 1937.

The Railroad Retirement Act of 1937, referred to in par. (32), is act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended, which was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, eff. Jan. 1, 1975. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974 and is set out as section 231 et seq. of Title 45, Railroads. For transitional provisions leading to coverage of the Railroad Retirement Act of 1974, see sections 201 to 210 of Pub. L. 93–445, set out as notes under section 231 of Title 45.

The International Organization Immunities Act, referred to in par. (32) is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, which is classified principally to section 288 et seq. of Title 22, Foreign Relations and Intercourse.

The Investment Advisors Act of 1940, referred to in par. (38), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified to section 80b–1 et seq. of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1003, 1023, 1053, 1055, 1081, 1301, 1321, 1342 of this title; title 18 section 1954.

§ 1003. Coverage.

(a) Except as provided in subsection (b) of this section and in sections 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained—

(1) by any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) by both.

(b) The provisions of this subchapter shall not apply to any employee benefit plan if—

(1) such plan is a governmental plan (as defined in section 1002(32) of this title);

(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of Title 26;

(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or

(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.

(Pub. L. 93–406, title I, § 4, Sept. 2, 1974, 88 Stat. 839.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1051, 1081, 1101, 1144 of this title.

SUBTITLE B.—REGULATORY PROVISIONS

PART 1.—REPORTING AND DISCLOSURE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1131 of this title.

§ 1021. Duty of disclosure and reporting.

(a) Summary plan description and information to be furnished to participants and beneficiaries.

The administrator of each employee benefit plan shall cause to be furnished in accordance with section 1024(b) of this title to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan—

(1) a summary plan description described in section 1022 (a) (1) of this title; and

(2) the information described in section 1024(b) (3) and 1025 (a) and (c) of this title.

(b) Plan description, modifications and changes, and reports to be filed with Secretary of Labor.

The administrator shall, in accordance with section 1024(a) of this title, file with the Secretary—

(1) the summary plan description described in section 1022 (a) (1) of this title;

(2) a plan description containing the matter required in section 1022(b) of this title;

(3) modifications and changes referred to in section 1022(a) (2) of this title;

(4) the annual report containing the information required by secton 1023 of this title; and

(5) terminal and supplementary reports as required by subsection (c) of this section.

(c) Terminal and supplementary reports.

(1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.

(2) The Secretary may require terminal reports to be filed with regard to any employee welfare benefit plan which is winding up its affairs in accordance with regulations promulgated by the Secretary.

(3) The Secretary may require that a plan described in paragraph (1) or (2) file a supplementary or terminal report with the annual report in the year such plan is terminated and that a copy of such supplementary or terminal report in the case of a plan described in paragraph (1) be also filed with the Pension Benefit Guaranty Corporation.

(d) Cross references.

For regulations relating to coordination of reports to the Secretaries of Labor and the Treasury, see section 1204 of this title.

(Pub L. 93–406, title I, § 101, Sept. 2, 1974, 88 Stat. 840.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

§ 1022. Plan description and summary plan description.

(a)(1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in section 1024(b) of this title. The summary plan description shall include the information described in subsection (b) of this section, shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) of this section shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with section 1024(b)(1) of this title.

(2) A plan description (containing the information required by subsection (b) of this section) of any employee benefit plan shall be prepared on forms prescribed by the Secretary, and shall be filed with the Secretary as required by section 1024(a)(1) of this title. Any material modification in the terms of the plan and any change in the information described in subsection (b) of this section shall be filed in accordance with section 1024(a)(1)(D) of this title.

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator; the name and address of the administrator; names, titles, and addresses of any trustee or trustees (if they are persons different from the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for nonforfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan

and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under section 1133 of this title). (Pub. L. 93–406, title I, § 102, Sept. 2, 1974, 88 Stat. 841.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

Secretary authorized, effective Sept. 2, 1974 to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024, 1029 of this title.

§ 1023. Annual reports.

(a) Publication and filing.

(1)(A) An annual report shall be published with respective to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with section 1024(a) of this title, and shall be made available and furnished to participants in accordance with section 1024(b) of this title.

(B) The annual report shall include the information described in subsections (b) and (c) of this section and where applicable subsections (d) and (e) of this section and shall also include—

(i) a financial statement and opinion, as required by paragraph (3) of this subsection, and

(ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this subchapter is maintained by—

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,

(B) a bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust, or custodial account, or

(C) a plan sponsor as defined in section 1002(16)(B) of this title,

such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary).

(3)(A) Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report by subsection (b) of this section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this section and the summary material required under section 1024(b)(3) of this title present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual report, the requirements of this paragraph shall not apply. In a case where by reason of section 1024(a)(2) of this title a plan is required only to file a simplified annual report, the Secretary may waive the requirements of this paragraph.

(B) In offering his opinion under this section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) of this section prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(D) For purposes of this subchapter, the term "qualified public accountant" means—

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

(4)(A) The administrator of an employee pension benefit plan subject to the reporting requirement of subsection (d) of this section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under subsection (d) of this section. In a case where a plan is not required to file an annual report, the requirement of this paragraph shall not apply, and, in a case where by reason of section 1024(a)(2) of this title, a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under subsection (d) of this section—

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

(ii) represent his best estimate of anticipated experience under the plan.

The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this subchapter, the term "enrolled actuary" means an actuary enrolled under subtitle C of subchapter II of this chapter.

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under subsection (b) of this section to which any qualified public accountant has expressed an opinion, if he so states his reliance.

(b) Financial statement.

An annual report under this section shall include a financial statement containing the following information:

(1) With respect to an employee welfare benefit plan; a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) With respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) With respect to all employee benefit plans, the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issue, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest, collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expense incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance, the identity and address of the obligor, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer, employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears, and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this subsection; and

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is—

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transactions exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in paragraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

(c) Information to be furnished by administrator.

The administrator shall furnish as a part of a report under this section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

(d) Actuarial statement.

With respect to an employee pension benefit plan (other than (A) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 1081(b) of this title, or (C) a plan described both in section 1321(b) of this title and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 1081(a) of this title) an annual report under this section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs, the accrued liabilities, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 1082 of this title.

(4) The number of participants and beneficiaries, both retired and nonretired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 1082 of this title and a statement explaining the basis of such valuation of present value of assets.

(6) The present value of all of the plan's liabilities for nonforfeitable pension benefits allocated by the termination priority categories as set forth in section 1344 of this title, and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for

purposes of this section) "termination priority categories" and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories.

(7) A certification of the contribution necessary to reduce the accumulated funding deficiency to zero.

(8) A statement by the enrolled actuary—

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the requirements of section 1082(c)(3) of this title (relating to reasonable actuarial assumptions and methods) have been complied with.

(9) A copy of the opinion required by subsection (a)(4) of this section.

(10) Such other information regarding the plan as the Secretary may be regulation require.

(11) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under subsection (a)(4) of this section.

(e) Statement from insurance company, insurance service, or other similar organizations which sell or guarantee plan benefits.

If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this section shall include a statement from such insurance company, service, or other similar organization covering the plan year and enumerating—

(1) the premium rate or subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service, or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

(Pub. L. 93–406, title I, § 103, Sept. 2, 1974, 88 Stat. 841.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

CONSOLIDATION OF ACTUARIAL REPORTS

Secretary of the Treasury and Secretary of Labor to take such steps as may be necessary to assure coordination to the maximum extent feasible between the actuarial reports required by subsec. (d) of this section and section 6059 of Title 26, Internal Revenue Code, see section 1033(c) of Pub. L. 93–406, set out as a note under section 6059 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024, 1029, of this title.

§ 1024. Filing and furnishing of information.

(a) Filing of annual report, plan description, summary plan description, and modifications and changes with Secretary.

(1) The administrator of any employee benefit plan subject to this part shall file with the Secretary—

(A) the annual report for a plan year within 210 days after the close of such year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing);

(B) the plan description within 120 days after such plan becomes subject to this part and an updated plan description, no more frequently than once every 5 years, as the Secretary may require;

(C) a copy of the summary plan description at the time such summary plan description is required to be furnished to participants and beneficiaries pursuant to subsection (b)(1)(B) of this section; and

(D) modifications and changes referred to in section 1022(a)(2) of this title within 60 days after such modification or change is adopted or occurs, as the case may be.

The Secretary shall make copies of such plan descriptions, summary plan descriptions, and annual reports available for inspection in the public document room of the Department of Labor. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(2)(A) With respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants. In addition, and without limiting the foregoing sentence, the Secretary may waive or modify the requirements of section 1023(d)(6) of this title in such cases or categories of cases as to

which he finds that (i) the interests of the plan participants are not harmed thereby and (ii) the expense of compliance with the specific requirements of section 1023(d)(6) of this title is not justified by the needs of the participants, the Pension Benefit Guaranty Corporation, and the Department of Labor for some portion or all of the information otherwise required under section 1023(d)(6) of this title.

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this subchapter nor shall the Secretary be precluded from revoking provisions for simplified reports for any such plan if he finds it necessary to do so in order to carry out the objectives of this subchapter.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this subchapter, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section—

(A) if he determines that such filing is incomplete for purposes of this part; or

(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to section 1023(a)(3)(A) or section 1023(a)(4)(B) of this title.

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions—

(A) retain an independent qualified public accountant (as defined in section 1023(a)(3)(D) of this title) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 1023(a)(4)(C) of this title) on behalf of the plan participants, to prepare an actuarial statement,

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this subchapter.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(b) Publication of summary plan description and annual report to participants and beneficiaries of plan.

Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of summary, plan description, and all modifications and changes referred to in section 1022(a)(1) of this title—

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this part an updated summary plan description described in section 1022 of this title which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in section 1022 of this title every tenth year after the plan becomes subject to this part. If there is a modification or change described in section 1022(a)(1) of this title, a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan.

(2) The administrator shall make copies of the plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertiment information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrators shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 1023(b)(3) of this title and such other material as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(c) Statement of rights.

The Secretary may by regulation require that the administrator of any employee benefit plan furnish

to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this subchapter.

(d) Cross references.

For regulations respecting coordination of reports to the Secretaries of Labor and the Treasury, see section 1204 of this title.

(Pub. L. 93–406, title I, § 104, Sept. 2, 1974, 88 Stat. 847.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1022, 1023, 1027, 1029 of this title; title 26 section 6058.

§ 1025. Reporting of participant's benefit rights.

(a) Statement furnished by administrator to participants and beneficiaries.

Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

(1) the total benefits accrued, and

(2) the unforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) One-per-year limit on reports.

In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) of this section during any one 12 month period.

(c) Individual statement furnished by administrator to participants setting forth information in administrator's Internal Revenue registration statement.

Each administrator required to register under section 6057 of Title 26 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by section 6057(a)(2) of Title 26.

(d) Plans to which more than one unaffiliated employer is required to contribute; regulations.

Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury. (Pub. L. 93–406, title I, § 105, Sept. 2, 1974, 88 Stat. 849.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

Secretary of Labor authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations by him, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1026, 1132 of this title.

§ 1026. Reports made public information.

(a) Except as provided in subsection (b) of this section, the contents of the descriptions, annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in section 1025(a) and 1025(c) of this title with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under title II of the Social Security Act may be disclosed under such Act. (Pub. L. 93–406, title I, § 106, Sept. 2, 1974, 88 Stat. 850.)

REFERENCES IN TEXT

Title II of the Social Security Act, referred to in subsec. (b), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

§ 1027. Retention of records.

Every person subject to a requirement to file any description or report or to certify any information therefor under this subchapter or who would be subject to such a requirement but for an exemption or simplified reporting requirement under section 1024(a)(2) or (3) of this title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under section 1024(a)(2) or (3) of this title (Pub. L. 93–406, title I, § 107, Sept. 2, 1974, 88 Stat. 850.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

§ 1028. Reliance on administrative interpretations.

In any criminal proceeding under section 1131 of this title, based on any act or omission in alleged violation of this part or section 1112 of this title, no person shall be subject to any liability or punishment for or on account of the failure of such person to (1) comply with this part or section 1112 of this title, if he pleads and proves that the act of omission complained of was in good faith, in conformity with, and

in reliance on any regulation or written ruling of the Secretary, or (2) publish and file any information required by any provision of this part if he pleads and proves that he published and filed such information in good faith, and in conformity with any regulation or written ruling of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the plan description, annual reports, and other reports required by this subchapter, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part. (Pub. L. 93–406, title I, § 108, Sept. 2, 1974, 88 Stat. 850.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

§ 1029. Forms.

(a) Except as provided in subsection (b) of this section, the Secretary may require that any information required under this subchapter to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to section 1023 (b)(3) and (c) of this title, must be submitted on such forms as he may prescribe.

(b) The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to section 1023(a)(3)(A) of this title, the actuarial statement required to be prepared by an enrolled actuary pursuant to section 1023(a)(4)(A) of this title and the summary plan description required by section 1022(a) of this title shall not be required to be submitted on forms.

(c) The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in section 1024 (b)(3) of this title and any other report, statements or documents (other than the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated), which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan. (Pub. L. 93–406, title I, § 109, Sept. 2, 1974, 88 Stat. 850.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1135 of this title.

§ 1030. Alternative methods of compliance.

(a) The Secretary on his own motion or after having received the petition of an administrator may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan, or class of pension plans, subject to such requirement if he determines—

(1) that the use of such alternative method is consistent with the purposes of this subchapter and that it provides adequate disclosure to the participants and beneficiaries in the plan, and adequate reporting to the Secretary,

(2) that the application of such requirement of this part would—

(A) increase the costs to the plan, or

(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of this part would be adverse to the interests of plan participants in the aggregate.

(b) An alternative method may be prescribed under subsection (a) of this section by regulation or otherwise. If an alternative method is prescribed other than by regulation, the Secretary shall provide notice and an opportunity for interested persons to present their views, and shall publish in the Federal Register the provisions of such alternative method. (Pub. L. 93–406, title I, § 110, Sept. 2, 1974, 88 Stat. 851.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1031(b)(2) of this title, see section 1031(b)(1) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1143, 1343 of this title.

§ 1031. Repeal and effective date.

(a)(1) The Welfare and Pension Plans Disclosure Act is repealed except that such Act shall continue to apply to any conduct and events which occurred before the effective date of this part.

(2)(A) Section 664 of Title 18 is amended by striking out "any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974".

(B)(i) Section 1027 of such Title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "title I of the Employee Retirement Income Security Act of 1974", and by striking out "Act" each place it appears and inserting in lieu thereof "title".

(ii) The heading for such section is amended by striking out "WELFARE AND PENSION PLANS DISCLOSURE ACT" and inserting in lieu thereof "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974".

(iii) The table of sections of chapter 47 of such Title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" in the item relating to section 1027 and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(C) Section 1954 of such Title 18 is amended by striking out "any plan subject to the provisions of

the Welfare and Pension Plans Disclosure Act as amended" and inserting in lieu thereof "any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974"; and by striking out "sections 3(3) and 5(b) (1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974".

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (section 441 of this title) is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(b)(1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a) of this section) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2) of this section) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

(c) The provisions of this subchapter authorizing the Secretary to promulgate regulations shall take effect on September 2, 1974. (Pub. L. 93–406, title I, § 111, Sept. 2, 1974, 88 Stat. 851.)

REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 85–836, Aug. 28, 1958, 72 Stat. 997, which was classified to section 301 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

PART 2.—PARTICIPATION AND VESTING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1103, 1132, 1201, 1202 of this title; title 26 section 6057.

§ 1051. Coverage.

This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title) other than—

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(3)(A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of Title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c)(18) of Title 26;

(4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of Title 26 and which does not at any time after September 2, 1974, provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of Title 26;

(6) an individual retirement account or annuity described in section 408 of Title 26, or a retirement bond described in section 409 of Title 26; or

(7) an excess benefit plan.

(Pub. L. 93–406, title I, § 201, Sept. 2, 1974, 88 Stat. 852.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1061 of this title, see section 1061(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061 (c) and (d) of this title, see section 1061(b)(2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1003 of this title.

§ 1052. Minimum participation standards.

(a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 25; or

(ii) the date on which he completes 1 year of service.

(B)(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "3 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) of Title 26) by an employer which is exempt from tax under section 501(a) of Title 26, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "30" for "25". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age, unless—

(A) the plan is a—

(i) defined benefit plan, or

(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and

(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

(3)(A) For purposes of this section, the term "year of service" means a 12-month period during

which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1) of this section.

(2) In the case of any employee who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title) under the plan to which the service requirements of clause (i) of subsection (a)(1)(B) of this section apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) of this section in the case of any participant who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3) of this section) after his return.

(4) In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) of this section if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this pararaph by reason of any prior break in service. (Pub. L. 93–406, title I, § 202, Sept. 2, 1974, 88 Stat. 853.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1061 of this title, see section 1061(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061 (c) and (d) of this title, see section 1061(b)(2) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1053, 1054, 1060, 1061 of this title.

§ 1053. Minimum vesting standards.

(a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

Years of service:	Nonforfeitable percentage
5	25.
6	30.
7	35.
8	40.
9	45.
10	50.
11	60.
12	70.
13	80.
14	90.
15 or more	100.

(C)(i) A plan satisfies the requirements of this subparagraph if a participant who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

If years of service equal or exceed—	and sum of age and service equals or exceeds—	then the nonforfeitable percentage is—
5	45	50.
6	47	60.
7	49	70.
8	51	80.
9	53	90.
10	55	100.

(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this paragraph unless any participant who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 1055 of this title).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 1082(c)(8) of this title.

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 1054(c)(2)(C) of this title) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 1054(c)(2)(C) of this title (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before September 2, 1974, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) Cross Reference.—

For nonforfeitably[1] where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 1056(c) of this title.

(b)(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2) of this section, all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 22, except that in case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2) of this section, the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

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[1] So in original.

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970; and

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) For purposes of this section, the term "hour of service" has the meaning provided by section 1052(a)(3)(C) of this title.

(C) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(3)(A) For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 1054(b)(1)(F) of this title who has any 1-year break in service, years of service after such break shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such break.

(D) For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service.

(4) Cross References.—

(A) For definitions of "accrued benefit" and "normal retirement age", see sections 1002 (23) and (24) of this title;

(B) For effect of certain cash out distributions, see section 1054(d)(1) of this title.

(c)(1)(A) A plan amendment changing any vesting schedule under this plan shall be treated as not satisfying the requirements of subsection (a)(2) of this section if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) of this section unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) of this section shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of Title 26.

(3) The requirements of subsection (a)(2) of this section shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th year following the plan year for which such contributions were made. For purposes of this part, the term "class year plan" means a profit sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year.

(d) A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part. (Pub. L. 93–406, title I, § 203, Sept. 2, 1974, 88 Stat. 854.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1061 of this title, see section 1061(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(c) and (d) of this title, see section 1061(b)(2) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1052, 1054, 1056, 1057, 1059, 1060, 1061, 1222 of this title; title 26 section 6057.

§ 1054. Benefit accrual requirements.

(a) Satisfaction of requirements by pension plans.

Each pension plan shall satisfy the requirements of subsection (b)(2) of this section, and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1) of this section.

(b) Enumeration of plan requirements.

(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 1052(a)(3)(A) of this title.

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 1081(b) of this title (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 1081(b) of this title were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account

of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act which benefits under the plan—

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(2) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(3)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 1052(b) of this title) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(c) Employee's accrued benefits derived from employer and employee contributions.

(1) For purposes of this section and section 1053 of this title an employee's accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2)(A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B)(i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

(ii) For purposes of clause (i), the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.

(C) For purposes of this subsection, the term "accumulated contributions" means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 1053(a)(2) of this title does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 1053(a)(2) of this title applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plans, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagraph (C), or both, from time to time as he may deem necessary. The rate of inteerst shall bear the relationship to 5 percent which the Secretary of the Treasury determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields

for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(E) The accrued benefit derived from employee contributions shall not exceed the greater of—

(i) the employee's accrued benefit under the plan, or

(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(d) Employee service which may be disregarded in determining employee's accrued benefits under plan.

Notwithstanding section 1053(b)(1) of this title, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $1,750) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service.

For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) of this section unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) of this section with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

(1) received such a distribution in any plan year to which this section applies which distribution was less than the present value of his accrued benefit,

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section.

In the case of a defined contribution plan, the plan provision required under this subsection may provide that such repayment must be made before the participant has any 1-year break in service commencing after such withdrawal.

(f) Employer treated as maintaining a plan.

For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) Decrease of accrued benefits through amendment of plan.

The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) of this title.

(h) Cross reference.

For special rules relating to class year plans and plan provisions adopted to preclude discrimination, see section 1053(c)(2) and (3) of this title.

(Pub. L. 93–406, title I, § 204, Sept. 2, 1974, 88 Stat. 858.)

REFERENCES IN TEXT

Title II of the Social Security Act, referred to in subsec. (b)(1)(G), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1061 of this title, see section 1061(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061 (c) and (d) of this title, see section 1061(b)(2) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1053, 1057, 1060, 1061 of this title.

§ 1055. Joint and survivor annuity requirement.

(a) Form of payment of annuity benefits.

If a pension plan provides for the payment of benefits in the form of an annuity, such plan shall provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity.

(b) Plans providing for payment of benefits before normal retirement age.

In the case of a plan which provides for the payment of benefits before the normal retirement age as

defined in section 1002(24) of this title, the plan is not required to provide for the payment of annuity benefits in a form having the effect of a qualified joint and survivor annuity during the period beginning on the date on which the employee enters into the plan as a participant and ending on the later of—

(1) the date the employee reaches the earliest retirement age, or

(2) the first day of the 120th month beginning before the date on which the employee reaches normal retirement age.

(c) Election of qualified joint and survivor annuity form.

(1) A plan described in subsection (b) of this section does not meet the requirements of subsection (a) of this section unless, under the plan, a participant has a reasonable period in which he may elect the qualified joint and survivor annuity form with respect to the period beginning on the date on which the period described in subsection (b) of this section ends and ending on the date on which he reaches normal retirement age if he continues his employment during that period.

(2) A plan does not meet the requirements of this subsection unless, in the case of such election, the payments under the survivor annuity are not less than the payments which would have been made under the joint annuity to which the participant would have been entitled if he had made an election under this subsection immediately prior to his retirement and if his retirement had occurred on the date immediately preceding the date of his death and within the period within which an election can be made.

(d) Participant's spouse not entitled to receive survivor annuity.

A plan shall not be treated as not satisfying the requirements of this section solely because the spouse of the participant is not entitled to receive a survivor annuity (whether or not an election has been made under subsection (c) of this section) unless the participant and his spouse have been married throughout the 1-year period ending on the date of such participant's death.

(e) Election to take annuity.

A plan shall not be treated as satisfying the requirements of this section unless, under the plan, each participant has a reasonable period (as prescribed by the Secretary of the Treasury by regulations) before the annuity starting date during which he may elect in writing (after having received a written explanation of the terms and conditions of the joint and survivor annuity and the effect of an election under this subsection) not to take such joint and survivor annuity.

(f) Plan provisions which render election or revocation ineffective if participant dies within period of up to 2 years following date of election or revocation.

A plan shall not be treated as not satisfying the requirements of this section solely because, under the plan there is a provision that any election under subsection (c) or (e) of this section, and any revocation of any such election, does not become effective (or ceases to be effective) if the participant dies within a period (not in excess of 2 years) beginning on the date of such election or revocation, as the case may be. The preceding sentence does not apply unless the plan provision described in the preceding sentence also provides that such an election or revocation will be given effect in any case in which—

(1) the participant dies from accidental causes,

(2) a failure to give effect to the election or revocation would deprive the participant's survivor of a survivor annuity, and

(3) such election or revocation is made before such accident occurred.

(g) Definitions.

For purposes of this section:

(1) The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or by reason of disability).

(2) The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(3) The term "qualified joint and survivor annuity" means an annuity for the life of the participant with a survivor annuity for the life of his spouse which is not less than one-half of, or greater than, the amount of the annuity payable during the joint lives of the participant and his spouse and which is the actuarial equivalent of a single annuity for the life of the participant.

(h) Increased costs resulting from providing joint and survivor annuity benefits.

For the purposes of this section, a plan may take into account in any equitable fashion (as determined by the Secretary of the Treasury) any increased costs resulting from providing joint and survivor annnuity benefits under an election made under subsection (c) of this section.

(i) Effective date.

This section shall apply only if—

(1) the annuity starting date did not occur before the effective date of this section, and

(2) the participant was an active participant in the plan on or after such effective date.

(Pub. L. 93–406, title I, § 205, Sept. 2, 1974, 88 Stat. 862.)

REFERENCES IN TEXT

For the effective date of this section, referred to in subsec. (i), see Effective Date note under this section.

EFFECTIVE DATE

Section applicable with respect to plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(d) of this title, see section 1061(b)(1) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(c) and (d) of this title, see section 1061(b)(2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1061 of this title.

§ 1056. Form and payment of benefits.

(a) Commencement date for payment of benefits.

Each pension plan shall provide that unless the participant otherwise elects, the payment of bene-

fits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

(1) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(3) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, such plan shall provide that a participant who satisfied the service requirements for such early retirement benefit, but separate from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury.

(b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937.

If—

(1) a participant or beneficiary is receiving benefits under a pension plan, or

(2) a participant is separated from the service and has non-forfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act or the Railroad Retirement Act of 1937, or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) Forfeiture of accrued benefits derived from employer contributions.

No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 1053(a)(3)(D)(iii) of this title.

(d) Assignment or alienation of plan benefits.

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit and is exempt from the tax imposed by section 4975 of Title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of Title 26. (Pub. L. 93–406, title I, § 206, Sept. 2, 1974, 88 Stat. 864.)

REFERENCES IN TEXT

Title II of the Social Security Act, referred to in subsec. (b), is classified to section 401 et seq. of Title 42, The Public Health and Welfare.

The Railroad Retirement Act of 1937, referred to in subsec. (b), is act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended, which was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, eff. Jan. 1, 1975. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974 and is set out as section 231 et seq. of Title 45, Railroads. For transitional provisions leading to coverage of the Railroad Retirement Act of 1974, see sections 201 to 210 of Pub. L. 93–445, set out as notes under section 231 of Title 45.

EFFECTIVE DATE

Subsecs. (a)–(c) of this section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1061 of this title, see section 1061(a) of this title.

Subsec. (d) of this section applicable with respect to plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(d) of this title, see section 1061(b)(1) of this title.

In the case of plans in existence on Jan. 1, 1974, this section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(c) and (d) of this title, see section 1061(b)(2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1053, 1061 of this title.

§ 1057. Temporary variances from certain vesting requirements.

In the case of any plan maintained on January 1, 1974, if, not later than 2 years after September 2, 1974, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements of section 1053(a)(2) or 1054(b)(1) (other than subparagraph (D) thereof) of this title or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation.

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 1083 or 1084 of this title would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year

before the expiration of such period, the administrator petitions the Secretary for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years. (Pub. L. 93–406, title I, § 207, Sept. 2, 1974, 88 Stat. 865.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1061 of this title, see section 1061(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(c) and (d) of this title, see section 1061(b)(2) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1143 of this title.

§ 1058. Mergers and consolidations of plans or transfers of plan assets.

A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after September 2, 1974, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). This paragraph shall apply in the case of a multiemployer plan only to the extent determined by the Pension Benefit Guaranty Corporation. (Pub. L. 93–406, title I, § 208, Sept. 2, 1974, 88 Stat. 865.)

EFFECTIVE DATE

Section applicable with respect to plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(d) of this title, see section 1061(b)(1) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(c) and (d) of this title, see section 1061(b)(2) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1061, 1343 of this title.

§ 1059. Recordkeeping and reporting requirements.

(a)(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 1053(b)(3)(A) of this title).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.

(2) If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary, make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a) of this section, to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause. (Pub. L. 93–406, title I, § 209, Sept. 2, 1974, 88 Stat. 865.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after September 2, 1974, except as otherwise provided in section 1061 of this title, see section 1061(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061(c) and (d) of this title, see section 1061(b)(2) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

§ 1060. Plans maintained by more than one employer; predecessor plans; employer groups.

(a) Notwithstanding any other provision of this part or part 3, the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 1052 of this title shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 1053 and 1054 of this title shall be applied as if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 1082 of this title shall be determined as if all participants in the plan were employed by a single employer.

(b) For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) For purposes of sections 1052, 1053, and 1054 of this title, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of Title 26, determined without regard to section 1563(a)(4) and (e)(3)(C) of Title 26) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 1082 of this title shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) For purposes of sections 1052, 1053, and 1054 of this title, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c) of this section. (Pub. L. 93–406, title I, § 210, Sept. 2, 1974, 88 Stat. 866.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1061 of this title, see section 1061(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1061 (c) and (d) of this title, see section 1061(b)(2) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

§ 1061. Effective dates.

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b)(1) Except as otherwise provided in subsection (d) of this section, sections 1055, 1056(d) and 1058 of this title shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) of this section in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plain maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 1054 and 1055 of this title by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after September 2, 1974), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 1086(c) of this title, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this Act or the Internal Revenue Code of 1954 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on September 2, 1974, are not less favorable to participants, in the aggregate, than the rules provided under section 1052, 1053, and 1054 of this title.

(2) For purposes of paragraph (1), the term "supplementary or special provision" means any plan provision which—

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of any annuity for the life of the participant, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit, this part shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 1052 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1052 of this title first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 1052(b) of this title, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 1053 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1053 of this title first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer con-

tributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 1052(b)(3) of this title, or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974. (Pub. L. 93–406, title I, § 211, Sept. 2, 1974, 88 Stat. 867.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c)(1), is the Employee Retirement Income Security Act of 1974, which enacted this chapter. For additional classifications see Tables volume.

The Internal Revenue Code of 1954, referred to in subsec. (c)(1), is set out as Title 26, Internal Revenue Code.

Section 1017(d) of this Act, referred to in subsec. (d), is section 1017 of the Employee Retirement Income Security Act of 1974, which is set out in a note under section 410 of Title 26, Internal Revenue Code.

CODIFICATION

In subsecs. (a) and (c)(1), "September 2, 1974" has been substituted for "the date of the enactment of this Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1086 of this title.

PART 3.—FUNDING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1060, 1103, 1132, 1201, 1202 of this title.

§ 1081. Coverage.

(a) This part shall apply to any employee pension benefit plan described in section 1003(a) of this title, (and not exempted under section 1003(b) of this title), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b) of this section;

(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(4)(A) a plan which is established and maintained by a society, order, or association described in section 501(c)(8) or (9) of Title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan; or

(B) a trust described in section 501(c)(18) of Title 26;

(5) a plan which has not at any time after September 2, 1974, provided for employer contributions;

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of Title 26;

(7) an individual retirement account or annuity as described in section 408(a) of Title 26, or a retirement bond described in section 409 of Title 26;

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 1002(35)(B) of this title; or

(9) an excess benefit plan.

(b) For the purposes of paragraph (2) of subsection (a) of this section a plan is an "insurance contract plan" if—

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase became effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection. (Pub. L. 93–406, title I, § 301, Sept. 2, 1974, 88 Stat. 868.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1086 of this title, see section 1086(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1086(c) and (d) of this title, see section 1086 (b) of this title.

For application of this section to plans maintained by labor organizations which are exempt from tax under section 501(c)(5) of Title 26, Internal Revenue Code, exclusively for the benefit of its employees and their beneficiaries, see section 1086(e) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1003, 1023, 1054 of this title.

§ 1082. Minimum funding standards.

(a) Avoidance of accumulated funding deficiency.

(1) Every employee pension benefit plan subject to this part shall satisfy the minimum funding standard (or the alternative minimum funding standard under section 1085 of this title) for any plan year to which this part applies. A plan to which this part applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year the plan does not have an accumulated funding deficiency.

(2) For the purposes of this part, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this part applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

(b) Funding standard account.

(1) Each plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which this part applies, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(iii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plans years (40 plan years in the case of a multiemployer plan),

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(v) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 1083(c) of this title) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years, and

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under paragraph (3)(D).

(3) For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 30 plan years (40 plan years in the case of a multiemployer plan),

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years (20 plan years in the case of a multiemployer plan), and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 30 plan years.

(C) the amount of the waived funding deficiency (within the meaning of section 1083(c) of this title) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(5) The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(c) Methods.

(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2)(A) For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

(B) For purposes of this part, the value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may

be revoked only with the consent of the Secretary of the Treasury.

(3) For purposes of this part, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "wages" under section 3121 of Title 26, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of Title 26,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary of the Treasury. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary of the Treasury.

(6) If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (g) of this section) in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in paragraphs (2), (B), (C), and (D) and (3)(B) of subsection (b) of this section which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

(7) For purposes of paragraph (6), the term "full funding limitation" means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of the fair market value of the plan's assets or the value of such assets determined under paragraph (2).

(8) For purposes of this part, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary notifying him of such amendment and the Secretary has approved such amendment or, within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary unless he determines that such amendment is necessary because of a substantial business hardship (as determined under section 1083(b) of this title) and that waiver under section 1083(a) of this title is unavailable or inadequate.

(9) For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every 3 years, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(10) For purposes of this part, any contributions for a plan year made by an employer after the last day of such plan year, but not later than 2½ months after such day, shall be deemed to have been made on such last day. For purposes of this paragraph, such 2½ month period may be extended for not more than 6 months under regulations prescribed by the Secretary of the Treasury.

(d) Cross reference.

For alternative amortization method for certain multiemployer plans see section 1013(d) of this Act.

(Pub. L. 93–406, title I, § 302, Sept. 2, 1974, 88 Stat. 869.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(4)(A), is classified to section 301 et seq. of Title 42, The Public Health and Welfare.

Section 1013(d) of this Act, referred to in subsec. (d), is section 1013(d) of the Employee Retirement Income Security Act of 1974, which is set out as a note under section 412 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1086 of this title, see section 1086(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1086(c) and (d) of this title, see section 1086(b) of this title.

For application of this section to plans maintained by labor organizations which are exempt from tax under section 501(c)(5) of Title 26, Internal Revenue Code, exclusively for the benefit of its employees and their beneficiaries, see section 1086(e) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 1053, 1054, 1060, 1083, 1084, 1085, 1343 of this title.

§ 1083. Variance from minimum funding standard.

(a) If an employer, or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are unable to satisfy the minimum funding standard for a plan year without substantial business hardship and if application of the standard would be adverse to the interests of plan participants in the aggregate, the Secretary of the Treasury may waive the requirements of section 1082(a) of this title for such year with respect to all or any portion of the minimum funding standard other than the portion thereof determined under section 1082(b)(2)(C) of this title. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 5 of any 15 consecutive plan years.

(b) For purposes of this part, the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether—

(1) the employer is operating at an economic loss,

(2) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(3) the sales and profits of the industry concerned are depressed or declining, and

(4) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(c) For purposes of this part, the term "waived funding deficiency" means the portion of the minimum funding standard (determined without regard to subsection (b)(3)(C) of section 1082 of this title) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(d) Cross Reference.—

For corresponding duties of the Secretary of the Treasury with regard to implementation of the Internal Revenue Code of 1954, see section 412(d) of Title 26.

(Pub. L. 93–406, title I, § 303, Sept. 2, 1974, 88 Stat. 872.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1086 of this title, see section 1086(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1086(c) and (d) of this title, see section 1986(b) of this title.

For application of this section to plans maintained by labor organizations which are exempt from tax under section 501(c)(5) of Title 26, Internal Revenue Code, exclusively for the benefit of its employees and their beneficiaries, see section 1086(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1057, 1082, 1084, 1143 of this title.

§ 1084. Extension of amortization periods.

(a) The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B) of section 1082 of this title) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if he determines that such extension would carry out the purposes of this chapter and would provide adequate protection for participants under the plan and their beneficiaries and if he determines that the failure to permit such extension would—

(1) result in—

(A) a substantial risk to the voluntary continuation of the plan, or

(B) a substantial curtailment of pension benefit levels or employee compensation, and

(2) be adverse to the interests of plan participants in the aggregate.

(b)(1) No amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under section 1083(a) of this title or an extension of time under subsection (a) of this section is in effect with respect to the plan, or if a plan amendment described in section 1082(c)(8) of this title has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(2) Paragraph (1) shall not apply to any plan amendment which—

(A) the Secretary determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan.

(B) only repeals an amendment described in section 1082(c)(8) of this title, or

(C) is required as a condition of qualification under part I of subchapter D, of chapter 1, of Title 26.

(Pub. L. 93–406, title I, § 304, Sept. 2, 1974, 88 Stat. 873.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles, I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to the Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1086 of this title, see section 1086(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1086(c) and (d) of this title, see section 1086(b) of this title.

For application of this section to plans maintained by labor organizations which are exempt from tax under section 501(c)(5) of Title 26, Internal Revenue Code, exclusively for the benefit of its employees and their beneficiaries, see section 1086(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1057, 1143 of this title.

§ 1085. Alternative minimum funding standard.

(a) Maintenance of account.

A plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this section.

(b) Operation of account.

For a plan year the alternative minimum funding standard accounts shall be—

(1) charged with the sum of—

(A) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,

(B) the excess, if any, of the present value of accrued benefits under the plan over the fair market value of the assets, and

(C) an amount equal to the excess, if any, of credits to the alternative minimum funding standard account for all prior plan years over charges to such account for all such years, and

(2) credited with the amount considered contributed by the employer to or under the plan (within the meaning of section 1082(c)(10) of this title) for the plan year.

(c) Interest.

The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under section 1082(b)(5) of this title with respect to the funding standard account. (Pub. L. 93–406, title I, § 305, Sept. 2, 1974, 88 Stat. 873.)

EFFECTIVE DATE

Section applicable in the case of plan years beginning after Sept. 2, 1974, except as otherwise provided in section 1086 of this title, see section 1086(a) of this title.

In the case of plans in existence on Jan. 1, 1974, section applicable in the case of plan years beginning after Dec. 31, 1975, except as otherwise provided in section 1086(c) and (d) of this title, see section 1086(b) of this title.

For application of this section to plans maintained by labor organizations which are exempt from tax under section 501(c)(5) of Title 26, Internal Revenue Code, exclusively for the benefit of its employees and their beneficiaries, see section 1086(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1082 of this title.

§ 1086. Effective dates.

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b) Except as otherwise provided in subsections (c) and (d) of this section, in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee representatives and one or more employers, this part shall apply only with respect to plan years beginning after the earlier of the date specified in subparagraph (A) or (B) of section 1061(c)(1) of this title.

(2) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.

(d) In the case of a plan the administrator of which elects under section 1017(d) of this Act to have the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit to apply to a plan year and to all subsequent plan years, this part shall apply to plan years beginning on the earlier of the first plan year to which such election applies or the first plan year determined under subsections (a), (b), and (c) of this section.

(e) In the case of a plan maintained by a labor organization which is exempt from tax under section 501(c)(5) of Title 26 exclusively for the benefit of its employees and their beneficiaries, this part shall be applied by substituting for the term "December 31, 1975" in subsection (b) of this section, the earlier of—

(1) the date on which the second convention of such labor organization held after September 2, 1974, ends, or

(2) December 31, 1980,

but in no event shall a date earlier than the later of December 31, 1975, or the date determined under subsection (c) of this section be substituted, (Pub. L. 93–406, title I, § 306, Sept. 2, 1974, 88 Stat. 874.)

REFERENCES IN TEXT

Section 1017 of this Act, referred to in subsec. (d), is section 1017 of the Employee Retirement Income Security Act of 1974, which is set out as a note under section 410 of Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (a), "September 2, 1974" has been substituted for "the date of the enactment of this Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1061 of this title.

PART 4.—FIDUCIARY RESPONSIBILITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1002, 1132, 1201, 1304, 1342 of this title.

§ 1101. Coverage.

(a) This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title), other than—

(1) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; or

(2) any agreement described in section 736 of Title 26, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest.

(b) For purposes of this part:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to include any assets of such insurer. For purposes of this paragraph:

(A) The term "insurer" means an insurance company, insurance service, or insurance organization, qualified to do business in a State.

(B) The term "guaranteed benefit policy" means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account.

(Pub. L. 93–406, title I, § 401, Sept. 2, 1974, 88 Stat. 874.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(1), is classified to section 80a–1 et seq. of Title 15, Commerce and Trade.

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1003 of this title; title 26 section 4975.

§ 1102. Establishment of plan.

(a) Named fiduciaries.

(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this subchapter, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Requisite features of plan.

Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this subchapter,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 1105(c)(1) of this title),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Optional features of plan.

Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in section 1105(c)(1) of this title, may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

(Pub. L. 93–406, title I, § 402, Sept. 2, 1974, 88 Stat. 815.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1103, 1105, 1114 of this title.

§ 1103. Establishment of trust.

(a) Benefit plan assets to be held in trust; authority of trustees.

Except as provided in subsection (b) of this section, all assets of an employee benefit plan shall be held in trust by one or more trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan instrument described in section 1102(a) of this title or appointed by a person who is a named fiduciary, and upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that—

(1) the plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper directions of such fiduciary which are made in accordance with the terms of the plan and which are not contrary to this subchapter, or

(2) authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers pursuant to section 1102(c)(3) of this title.

(b) Exceptions.

The requirements of subsection (a) of this section shall not apply—

(1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;

(2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;

(3) to a plan—

(i) some or all of the participants of which are employees described in section 401(c)(1) of Title 26; or

(ii) which consists of one or more individual retirement accounts described in section 408 of Title 26, to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of Title 26, whichever is applicable;

(4) to a plan which the Secretary exempts from the requirement of subsection (a) of this section and which is not subject to any of the following provisions of this chapter—

(A) part 2 of this subtitle,

(B) part 3 of this subtitle, or

(C) subchapter III of this chapter; or

(5) to a contract established and maintained under section 403(b) of Title 26 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of Title 26.

(c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets.

(1) Except as provided in paragraph (2) or (3) or subsection (d) of this section, or under section 1342 and 1344 of this title (relating to termination of insured plans), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

(2)(A) In the case of a contribution which is made by an employer by a mistake of fact, paragraph (1) shall not prohibit the return of such contribution to the employer within one year after the payment of the contribution.

(B) If a contribution is conditioned on qualification of the plan under section 401, 403(a), or 405(a) of Title 26, and if the plan does not qualify, then paragraph (1) shall not prohibit the return of such contributions to the employer within one year after the date of denial of qualification of the plan.

(C) If a contribution is conditioned upon the deductibility of the contribution under section 404 of Title 26, then, to the extent the deduction is disallowed, paragraph (1) shall not prohibit the return to the employer of such contribution (to the extent disallowed) within one year after the disallowance of the deduction.

(3) In the case of a contribution which would otherwise be an excess contribution (as defined in section 4972(b) of Title 26) paragraph (1) shall not prohibit a correcting distribution with respect to such contribution from the plan to the employer to the extent permitted in such section to avoid payment of an excise tax on excess contributions under such section.

(d) Termination of plan.

(1) Upon termination of a pension plan to which section 1321 of this title does not apply at the time of termination and to which this part applies (other than a plan to which no employer contributions have been made) the assets of the plan shall be allocated in accordance with the provisions of section 1344 of this title, except as otherwise provided in regulations of the Secretary.

(2) The assets of a welfare plan which terminates shall be distributed in accordance with the terms of the plan, except as otherwise provided in regulations of the Secretary. (Pub. L. 93–406, title I, § 403, Sept. 2, 1974, 88 Stat. 876.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(4), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to the Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114(a) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031(c) and 1114(b)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1105, 1114 of this title.

§ 1104. Fiduciary duties.

(a)(1) Subject to sections 1103 (c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter.

(2) In the case of an eligible individual account plan (as defined in section 1107(d)(3) of this title), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B) is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 1107(d)(4) and (5) of this title).

(b) Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over the assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control.

(Pub. L. 93–406, title I, § 404, Sept. 2, 1974, 88 Stat. 877.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114(a) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031(c) and 1114(b)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105, 1107 of this title.

§ 1105. Liability for breach of co-fiduciary.

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

(b) Assets held by two or more trustees.

(1) Except as otherwise provided in subsection (d) of this section and in section 1103(a)(1) and (2) of this title, if the assets of a plan are held by two or more trustees—

(A) each shall use reasonable care to prevent a co-trustee from committing a breach; and

(B) they shall jointly manage and control the assets of the plan, except that nothing in this subparagraph (B) shall preclude any agreement, authorized by the trust instrument, allocating specific responsibilities, obligations, or duties among trustees, in which event a trustee to whom certain responsibilities, obligations, or duties have not been allocated shall not be liable by reason of this subparagraph (B) either individually or as a trustee for any loss resulting to the plan arising from the acts or omissions on the part of another trustee to whom such responsibilities, obligations, or duties have been allocated.

(2) Nothing in this subsection shall limit any liability that a fiduciary may have under subsection (a) of this section or any other provision of this part.

(3)(A) In the case of a plan the assets of which are held in more than one trust, a trustee shall not be liable under paragraph (1) except with respect to an act or omission of a trustee of a trust of which he is a trustee.

(B) No trustee shall be liable under this subsection for following instructions referred to in section 1103(a)(1) of this title.

(c) Allocation of fiduciary responsibility; designated persons to carry out fiduciary responsibilities.

(1) The instrument under which a plan is maintained may expressly provide for procedures (A) for allocating fiduciary responsibilities (other than trustee responsibilities) among named fiduciaries, and (B) for named fiduciaries to designate persons other than named fiduciaries to carry out fiduciary responsibilities (other than trustee responsibilities) under the plan.

(2) If a plan expressly provides for a procedure described in paragraph (1), and pursuant to such procedure any fiduciary responsibility of a named fiduciary is allocated to any person, or a person is designated to carry out any such responsibility, then such named fiduciary shall not be liable for an act or omission of such person in carrying out such responsibility except to the extent that—

(A) the named fiduciary violated section 1104(a)(1) of this title—

(i) with respect to such allocation or designation,

(ii) with respect to the establishment or implementation of the procedure under this paragraph (1), or

(iii) in continuing the allocation or designation; or

(B) the named fiduciary would otherwise be liable in accordance with subsection (a) of this section.

(3) For purposes of this subsection, the term "trustee responsibility" means any responsibility provided in the plan's trust instrument (if any) to manage or control the assets of the plan, other than a power under the trust instrument of a named fiduciary to appoint an investment manager in accordance with section 1102(c)(3) of this title.

(d) Investment managers.

(1) If an investment manager or managers have been appointed under section 1102(c)(3) of this title, then, notwithstanding subsections (a) (2) and (3) and subsection (b) of this section, no trustees shall be liable for the acts or omissions of such investment manager or managers, or be under an obligation to invest or otherwise manage any asset of the plan which is subject to the management of such investment manager.

(2) Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee. (Pub. L. 93–406, title I, § 405, Sept. 2, 1974, 88 Stat. 878.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1102, 1110, 1114 of this title; title 26 section 4975.

§ 1106. Prohibited transactions.

(a) Except as provided in section 1108 of this title:

(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest;

(B) lending of money or other extension of credit between the plan and a party in interest;

(C) furnishing of goods, services, or facilities between the plan and a party in interest;

(D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or

(E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107(a) of this title.

(2) No fiduciary who has authority or discretion to control or manage the assets of a plan shall permit the plan to hold any employer security or employer real property if he knows or should know that holding such security or real property violates section 1107(a) of this title.

(b) A fiduciary with respect to a plan shall not—

(1) deal with the assets of the plan in his own interest or for his own account,

(2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries, or

(3) receive any consideration for his own personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

(c) A transfer of real or personal property by a party in interest to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a party-in-interest placed on the property within the 10-year period ending on the date of the transfer. (Pub. L. 93–406, title I, § 406, Sept. 2, 1974, 88 Stat. 879.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1108, 1114, 1132, 1203 of this title; title 26 section 4975.

§ 1107. Limitation with respect to acquisition and holding of employer securities and employer real property by certain plans.

(a) Percentage limitation.

Except as otherwise provided in this section and section 1114 of this title:

(1) A plan may not acquire or hold—

(A) any employer security which is not a qualifying employer security, or

(B) any employer real property which is not qualifying employer real property.

(2) A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.

(3)(A) After December 31, 1984, a plan may not hold any qualifying employer securities or qualifying employer real property (or both) to the extent that the aggregate fair market value of such securities and property determined on December 31, 1984, exceeds 10 percent of the greater of—

(i) the fair market value of the assets of the plan, determined on December 31, 1984, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(B) Subparagraph (A) of this paragraph shall not apply to any plan which on any date after December 31, 1974; and before January 1, 1985, did not hold employer securities or employer real property (or both) the aggregate fair market value of which determined on such date exceeded 10 percent of the greater of

(i) the fair market value of the assets of the plan, determined on such date, or

(ii) the fair market value of the assets of the plan determined on January 1, 1975.

(4)(A) After December 31, 1979, a plan may not hold any employer securities or employer real property in excess of the amount specified in regulations under subparagraph (B). This subparagraph shall not apply to a plan after the earliest date after December 31, 1974, on which it complies with such regulations.

(B) Not later than December 31, 1976, the Secretary shall prescribe regulations which shall have the effect of requiring that a plan divest itself of 50 percent of the holdings of employer securities and employer real property which the plan would be required to divest before January 1, 1985, under paragraph (2) or subsection (c) of this section (whichever is applicable).

(b) Exception.

(1) Subsection (a) of this section shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property by an eligible individual account plan.

(2) Cross References.—

(A) For exemption from diversification requirements for holding of qualifying employer securities and qualifying employer real property by eligible individual account plans, see section 1104(a)(2) of this title.

(B) For exemption from prohibited transactions for certain acquisitions of qualifying employer securities and qualifying employer real property which are not in violation of 10 percent limitation, see section 1108(e) of this title.

(C) For transitional rules respecting securities or real property subject to binding contracts in effect on June 30, 1974, see section 1114(c) of this title.

(c) Election.

(1) A plan which makes the election, under paragraph (3) shall be treated as satisfying the requirement of subsection (a)(3) of this section if and only if employer securities held on any date after December 31, 1974 and before January 1, 1985 have a fair market value, determined as of December 31, 1974, not in excess of 10 percent of the lesser of—

(A) the fair market value of the assets of the plan determined on such date (disregarding any portion of the fair market value of employer securities which is attributable to appreciation of such securities after December 31, 1974) but not less than the fair market value of plan assets on January 1, 1975, or

(B) an amount equal to the sum of (i) the total amount of the contributions to the plan received after December 31, 1974, and prior to such date, plus (ii) the fair market value of the assets of the plan, determined on January 1, 1975.

(2) For purposes of this subsection, in the case of an employer security held by a plan after January 1, 1975, the ownership of which is derived from ownership of employer securities held by the plan on January 1, 1975, or from the exercise of rights

derived from such ownership, the value of such security held after January 1, 1975, shall be based on the value as of January 1, 1975, of the security from which ownership was derived. The Secretary shall prescribe regulations to carry out this paragraph.

(3) An election under this paragraph may not be made after December 31, 1975. Such an election shall be made in accordance with regulations prescribed by the Secretary, and shall be irrevocable. A plan may make an election under this paragraph only if on January 1, 1975, the plan holds no employer real property. After such election and before January 1, 1985 the plan may not acquire any employer real property.

(d) Definitions.

For purposes of this section—

(1) The term "employer security" means a security issued by an employer of employees covered by the plan, or by an affiliate of such employer. A contract to which section 1108(b)(5) of this title applies shall not be treated as a security for purposes of this section.

(2) The term "employer real property" means real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer. For purposes of determining the time at which a plan acquires employer real property for purposes of this section, such property shall be deemed to be acquired by the plan on the date on which the plan acquires the property or on the date on which the lease to the employer (or affiliate) is entered into, whichever is later.

(3)(A) The term "eligible individual account plan" means an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on September 2, 1974, and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 408 of Title 26.

(B) Notwithstanding subparagraph (A), a plan shall be treated as an eligible individual account plan with respect to the acquisition or holding of qualifying employer real property or qualifying employer securities only if such plan explicitly provides for acquisition and holding of qualifying employer securities or qualifying employer real property (as the case may be). In the case of a plan in existence on September 2, 1974, this subparagraph shall not take effect until January 1, 1976.

(4) The term "qualifying employer real property" means parcels of employer real property—

(A) if a substantial number of the parcels are dispersed geographically;

(B) if each parcel of real property and the improvements thereon are suitable (or adoptable without excessive cost) for more than one use;

(C) even if all of such real property is leased to one lessee (which may be an employer, or an affiliate of an employer); and

(D) if the acquisition and retention of such property comply with the provisions of this part (other than section 1104(a)(1)(B) of this title to the extent it requires diversification, and sections 1104(a)(1)(C), 1106 of this title, and subsection (a) of this section).

(5) The term "qualifying employer security" means an employer security which is stock or a marketable obligation (as defined in subsection (e) of this section).

(6) The term "employee stock ownership plan" means an individual account plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase both of which are qualified, under section 401 of Title 26, and which is designed to invest primarily in qualifying employee securities, and

(B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

(7) A corporation is an affiliate of an employer if it is a member of any controlled group of corporations (as defined in section 1563(a) of Title 26, except that "applicable percentage" shall be substituted for "80 percent" wherever the latter percentage appears in such section) of which the employer who maintains the plan is a member. For purposes of the preceding sentence, the term "applicable percentage" means 50 percent, or such lower percentage as the Secretary may prescribe by regulation. A person other than a corporation shall be treated as an affiliate of an employer to the extent provided in regulations of the Secretary. An employer which is a person other than a corporation shall be treated as affiliated with another person to the extent provided by regulations of the Secretary. Regulations under this paragraph shall be prescribed only after consultation and coordination with the Secretary of the Treasury.

(8) The Secretary may prescribe regulations specifying the extent to which conversions, splits, the exercise of rights, and similar transactions are not treated as acquisitions.

(e) Marketable obligations.

For purposes of subsection (d)(5) of this section, the term "marketable obligation" means a bond, debenture, note, or certificate, or other evidence of indebtedness (hereinafter in this subsection referred to as "obligation") if—

(1) such obligation is acquired—

(A) on the market, either (i) at the price of the obligation prevailing on a national securities exchange which is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on such a national securities exchange, at a price not less favorable to the plan than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) from an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering

circular filed with the Securities and Exchnge Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) directly from the issuer, at a price not less favorable to the plan than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) immediately following acquisition of such obligation—

(A) not more than 25 percent of the aggregate amount of obligations issued in such issue and outstanding at the time of acquisition is held by the plan, and

(B) at least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) immediately following acquisition of the obligation, not more than 25 percent of the assets of the plan is invested in obligations of the employer or an affiliate of the employer.

(Pub. L. 93–406, title I, § 407, Sept. 2, 1974, 88 Stat. 880.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114(a) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031(c) and 1114(b)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1104, 1106, 1108, 1114 of this title; title 19 section 2373.

§ 1108. Exemptions from prohibited transactions.

(a) Grant of exemptions.

The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 1106 and 1107(a) of this title. Action under this subsection may be taken only after consultation and coordination with the Secretary of the Treasury. An exemption granted under this section shall not relieve a fiduciary from any other applicable provision of this chapter. The Secretary may not grant an exemption under this subsection unless he finds that such exemption is—

(1) administratively feasible,

(2) in the interests of the plan and of its participants and beneficiaries, and

(3) protective of the rights of participants and beneficiaries of such plan.

Before granting an exemption under this subsection from section 1106(a) or 1107(a) of this title, the Secretary shall publish notice in the Federal Register of the pendency of the exemption, shall require that adequate notice be given to interested persons, and shall afford interested persons opportunity to present views. The Secretary may not grant an exemption under this subsection from section 1106(b) of this title unless he affords an opportunity for a hearing and makes a determination on the record with respect to the findings required by paragraphs (1), (2), and (3) of this subsection.

(b) Enumeration of transactions exempted from section 1106 prohibitions.

The prohibitions provided in section 1106 of this title shall not apply to any of the following transactions:

(1) Any loans made by the plan to parties in interest who are participants or beneficiaries of the plan if such loans (A) are available to all such participants and beneficiaries on a reasonably equivalent basis, (B) are not made available to highly compensated employees, officers, or shareholders in an amount greater than the amount made available to other employees, (C) are made in accordance with specific provisions regarding such loans set forth in the plan, (D) bear a reasonable rate of interest, and (E) are adequately secured.

(2) Contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.

(3) A loan to an employee stock ownership plan (as defined in section 1107(d)(6) of this title), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at an interest rate which is not in excess of a reasonable rate.

If the plan gives collateral to a party in interest for such loan, such collateral may consist only of qualifying employer securities (as defined in section 1107(d)(5) of this title).

(4) The investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment.

(5) Any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State, if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a party in interest which is wholly owned (directly or indirectly) by the employer maintaining the plan, or by any person which is a party in interest with respect to the plan, but only if the total premiums and annuity consideration written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are parties in interest (not

including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan).

(6) The providing of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the providing of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and adherence to such guidelines would reasonably preclude such bank or similar financial institution from providing such ancillary service (i) in an excessive or unreasonable manner, and (ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans.

Such ancillary services shall not be provided at more than reasonable compensation.

(7) The exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion.

(8) Any transaction between a plan and (i) a common or collective trust fund or pooled investment fund maintained by a party in interest which is a bank or trust company supervised by a State or Federal agency or (ii) a pooled investment fund of an insurance company qualified to do business in a State, if—

(A) the transaction is a sale or purchase of an interest in the funds.

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan.

(9) The making by a fiduciary of a distribution of the assets of the plan in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 1344 of this title (relating to allocation of assets).

(c) Fiduciary benefits and compensation not prohibited by section 1106.

Nothing in section 1106 of this title shall be construed to prohibit any fiduciary from—

(1) receiving any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(2) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan; except that no person so serving who already receives full time pay from an employer or an association of employers, whose employees are participants in the plan, or from an employee organization whose members are participants in such plan shall receive compensation from such plan, except for reimbursement of expenses properly and actually incurred; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(d) Owner-employees; family members; shareholder employees.

Section 1107(b) of this title and subsections (a), (b), (c), and (e) of this section shall not apply to any transaction in which a plan, directly or indirectly—

(1) lends any part of the corpus or income of the plan to;

(2) pays any compensation for personal services rendered to the plan to; or

(3) acquires for the plan any property from or sells any property to;

any person who is with respect to the plan an owner-employee (as defined in section 401(c)(3) (of Title 26), a member of the family (as defined in section 267(c)(4) of Title 26) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of this subsection a shareholder employee (as defined in section 1379 of Title 26) and a participant or beneficiary of an individual retirement account, individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409 of Title 26) and an employer or association of employers which establishes such an account or annuity under section 408(c) of Title 26 shall be deemed to be an owner-employee.

(e) Acquisition or sale by plan of qualifying employer securities; acquisition, sale, or lease by plan of qualifying employer real property.

Sections 1106 and 1107 of this title shall not apply to the acquisition or sale by a plan of qualifying employer securities (as defined in section 1107(d)(5) of this title) or acquisition, sale or lease by a plan of qualifying employer real property (as defined in section 1107(d)(4) of this title)—

(1) if such acquisition, sale, or lease is for adequate consideration (or in the case of a marketable obligation, at a price not less favorable to the plan than the price determined under section 1107(e)(1) of this title),

(2) if no commission is charged with respect thereto, and

(3) if—

(A) the plan is an eligible individual account plan (as defined in section 1107(d)(3) of this title), or

(B) in the case of an acquisition or lease of qualifying employer real property by a plan which is not an eligible individual account plan, or of an acquisition of qualifying employer securities by such a plan, the lease or acquisition is not prohibited by section 1107(a) of this title.

(Pub. L. 93–406, title I, § 408, Sept. 2, 1974, 88 Stat. 883.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note set out under section 1001 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114 (b), (c), and (d) of this title, see section 1114(a) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031(c) and 1114(b)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1106, 1107 of this title; title 26 section 4975.

§ 1109. Liability for breach of fiduciary duty.

(a) Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 1111 of this title.

(b) No fiduciary shall be liable with respect to a breach of fiduciary duty under this subchapter if such breach was committed before he became a fiduciary or after he ceased to be a fiduciary. (Pub. L. 93–406, title I, § 409, Sept. 2, 1974, 88 Stat. 886.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1132 of this title.

§ 1110. Exculpatory provisions; insurance.

(a) Except as provided in sections 1105(b)(1) and 1105(d) of this title, any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

(b) Nothing in this subpart shall preclude—

(1) a plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary, if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary;

(2) a fiduciary from purchasing insurance to cover liability under this part from and for his own account; or

(3) an employer or an employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee benefit plan.

(Pub. L. 93–406, title I, § 410, Sept. 2, 1974, 88 Stat. 886.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1114 of this title.

§ 1111. Persons prohibited from holding certain positions.

(a) Conviction or imprisonment.

No person who has been convicted of, or has been imprisoned as a result of his conviction of, robbery, bribery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony violation of Federal or State law involving substances defined in section 802(6) of Title 21, murder, rape, kidnaping, perjury, assault with intent to kill, any crime described in section 80a–9(a)(1) of Title 15, a violation of any provision of this chapter, a violation of section 186 of this title, a violation of chapter 63 of Title 18, a violation of section 874, 1027, 1503, 1505, 1506, 1510, 1951, or 1954 of Title 18, a violation of the Labor-Management Reporting and Disclosure Act of 1959, or conspiracy to commit any such crimes or attempt to commit any such crimes, or a crime in which any of the foregoing crimes is an element, shall serve or be permitted to serve—

(1) as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee of any employee benefit plan, or

(2) as a consultant to any employee benefit plan,

during or for five years after such conviction or after the end of such imprisonment, whichever is the later, unless prior to the end of such five-year period, in the case of a person so convicted or imprisoned, (A) his citizenship rights, having been revoked as a result of such conviction, have been fully restored, or (B) the Board of Parole of the United States Department of Justice determines that such person's service in any capacity referred to in paragraph (1) or (2) would not be contrary to the purposes of this subchapter. Prior to making any such determination the Board shall hold an administrative hearing and shall give notice of such proceeding by certified mail to the State, county, and Federal prosecuting officials in the jurisdiction or jurisdictions in which such person was convicted. The Board's determination in any such proceeding shall be final. No person shall knowingly permit any other person to serve in any capacity referred to in paragraph (1) or (2) in violation of this subsection. Notwithstanding the preceding provisions of this subsection, no corporation or partnership will be precluded from acting as an administrator, fiduciary, officer, trustee, custodian, counsel, agent, or employee, of any employee benefit plan or as a

consultant to any employee benefit plan without a notice, hearing, and determination by such Board of Parole that such service would be inconsistent with the intention of this section.

(b) Penalty.

Any person who intentionally violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(c) Definitions.

For the purposes of this section:

(1) A person shall be deemed to have been "convicted" and under the disability of "conviction" from the date of the judgment of the trial court or the date of the final sustaining of such judgment on appeal, whichever is the later event.

(2) The term "consultant" means any person who, for compensation, advises or represents an employee benefit plan or who provides other assistance to such plan, concerning the establishment or operation of such plan.

(3) A period of parole shall not be considered as part of a period of imprisonment.

(Pub. L. 93–406, title I, § 411, Sept. 2, 1974, 88 Stat. 887.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (a), is classified to section 401 et seq. of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1109 of this title.

§ 1112. Bonding.

(a) Requisite bonding of plan officials.

Every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan (hereafter in this section referred to as "plan official") shall be bonded as provided in this section; except that—

(1) where such plan is one under which the only assets from which benefits are paid are the general assets of a union or of an employer, the administrator, officers, and employees of such plan shall be exempt from the bonding requirements of this section, and

(2) no bond shall be required of a fiduciary (or of any director, officer, or employee of such fiduciary) if such fiduciary—

(A) is a corporation organized and doing business under the laws of the United States or of any State;

(B) is authorized under such laws to exercise trust powers or to conduct an insurance business;

(C) is subject to supervision or examination by Federal or State authority; and

(D) has at all times a combined capital and surplus in excess of such a minimum amount as may be established by regulations issued by the Secretary, which amount shall be at least $1,000,000. Paragraph (2) shall apply to a bank or other financial institution which is authorized to exercise trust powers and the deposits of which are not insured by the Federal Deposit Insurance Corporation, only if such bank or institution meets bonding or similar requirements under State law which the Secretary determines are at least equivalent to those imposed on banks by Federal law.

The amount of such bond shall be fixed at the beginning of each fiscal year of the plan. Such amount shall be not less than 10 per centum of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary, after due notice and opportunity for hearing to all interested parties, and after consideration of the record, may prescribe an amount in excess of $500,000, subject to the 10 per centum limitation of the preceding sentence. For purposes of fixing the amount of such bond, the amount of funds handled shall be determined by the funds handled by the person, group, or class to be covered by such bond and by their predecessor or predecessors, if any, during the preceding reporting year, or if the plan has no preceding reporting year, the amount of funds to be handled during the current reporting year by such person, group, or class, estimated as provided in regulations of the Secretary. Such bond shall provide protection to the plan against loss by reason of acts of fraud or dishonesty on the part of the plan official, directly or through connivance with others. Any bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 6 through 13 of Title 6. Any bond shall be in a form or of a type approved by the Secretary, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(b) Unlawful acts.

It shall be unlawful for any plan official to whom subsection (a) of this section applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded as required by subsection (a) of this section and it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official, with respect to whom the requirements of subsection (a) of this section have not been met.

(c) Conflict of interest prohibited in procuring bonds.

It shall be unlawful for any person to procure any bond required by subsection (a) of this section from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.

(d) Exclusiveness of statutory basis for bonding requirement for persons handling funds or other property of employee benefit plans.

Nothing in any other provision of law shall require any person, required to be bonded as provided in subsection (a) of this section because he handles funds or other property of an employee benefit plan,

to be bonded insofar as the handling by such person of the funds or other property of such plan is concerned.

(e) Regulations.

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section including exempting a plan from the requirements of this section where he finds that (1) other bonding arrangements or (2) the overall financial condition of the plan would be adequate to protect the interests of the beneficiaries and participants. When, in the opinion of the Secretary, the administrator of a plan offers adequate evidence of the financial responsibility of the plan, or that other bonding arrangements would provide adequate protection of the beneficiaries and participants, he may exempt such plan from the requirements of this section. (Pub. L. 93–406, title I, § 412, Sept. 2, 1974, 88 Stat. 888.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114 (a) of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this part call for the promulgation of regulations, see sections 1031(c) and 1114(b)(1) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1028 of this title.

§ 1113. Limitation of actions.

(a) No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or

(2) three years after the earliest date (A) on which the plaintiff had actual knowledge of the breach or violation, or (B) on which a report from which he could reasonably be expected to have obtained knowledge of such breach or violation was filed with the Secretary under this subchapter;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation. (Pub. L. 93–406, title I, § 413, Sept. 2, 1974, 88 Stat. 889.)

EFFECTIVE DATE

Section effective Jan. 1, 1975, except as provided in section 1114(b), (c), and (d) of this title, see section 1114 (a) of this title.

§ 1114. Effective date.

(a) Except as provided in subsections (b), (c), and (d) of this section, this part shall take effect on January 1, 1975.

(b)(1) The provisions of this part authorizing the Secretary to promulgate regulations shall take effect on September 2, 1974.

(2) Upon application of a plan, the Secretary may postpone until not later than January 1, 1976, the applicability of any provision of sections 1102, 1103 (other than 1103(c)), 1105 (other than 1105(a) and (d)), and 1110(a) of this title, as it applies to any plan in existence on September 2, 1974, if he determines such postponement is (A) necessary to amend the instrument establishing the plan under which the plan is maintained and (B) not adverse to the interest of participants and beneficiaries.

(3) This part shall take effect on September 2, 1974, with respect to a plan which terminates after June 30, 1974, and before January 1, 1975, and to which at the time of termination section 1321 of this title applies.

(c) Section 1106 and 1107(a) of this title (relating to prohibited transactions) shall not apply—

(1) until June 30, 1984, to a loan of money or other extension of credit between a plan and a party in interest under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such loan or other extension of credit remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be, and if the execution of the contract, the making of the loan, or the extension of credit was not, at the time of such execution, making, or extension, a prohibited transaction (within the meaning of section 503(b) of Title 26 or the corresponding provisions of prior law);

(2) until June 30, 1984, to a lease or joint use of property involving the plan and a party in interest pursuant to a binding contract in effect on July 1, 1974 (or pursuant to renewals of such a contract), if such lease or joint use remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if the execution of the contract was not, at the time of such execution, a prohibited transaction (within the meaning of section 503(b) of Title 26) or the corresponding provisions of prior law;

(3) until June 30, 1984, to the sale, exchange or other disposition of property described in paragraph (2) between a plan and a party in interest if—

(A) in the case of a sale, exchange, or other disposition of the property by the plan to the party in interest, the plan receives an amount which is not less than the fair market value of the property at the time of such disposition; and

(B) in the case of the acquisition of the property by the plan, the plan pays an amount which is not in excess of the fair market value of the property at the time of such acquisition;

(4) Until June 30, 1977, to the provision of services, to which paragraphs (1), (2), and (3) do not apply between a plan and a party in interest—

(A) under a binding contract in effect on July 1, 1974 (or pursuant to renewals of such contract), or

(B) if the party in interest ordinarily and customarily furnished such services on June 30, 1974, if such provision of services remains at least as favorable to the plan as an arm's-length transaction with an unrelated party would be and if such provision of services was not, at the time of such provision, a prohibited transaction (within the meaning of section 503(b) of Title 26) or the corresponding provisions of prior law; or

(5) the sale, exchange, or other disposition of property which is owned by a plan on June 30, 1974, and all times thereafter, to a party in interest, if such plan is required to dispose of such property in order to comply with the provisions of section 1107(a) of this title (relating to the prohibition against holding excess employer securities and employer real property), and if the plan receives not less than adequate consideration.

(d) Any election, or failure to elect, by a disqualified person under section 2003(c)(1)(B) of this Act shall be treated for purposes of this part (but not for purposes of section 1144 of this title) as an act or omission occurring before the effective date of this part. (Pub. L. 93–406, title I, § 414, Sept. 2, 1974, 88 Stat. 889.)

REFERENCES IN TEXT

Section 2003(c)(1)(B) of this Act, referred to in subsec. (d), is section 2003(c)(1)(B) of Pub. L. 93–406, which is set out as a note under section 4975 of Title 26, Internal Revenue Code.

CODIFICATION

In subsec. (b), "September 2, 1974" has been substituted for "the date of enactment of this Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1107 of this title.

PART 5.—ADMINISTRATION AND ENFORCEMENT

§ 1131. Criminal penalties.

Any person who willfully violates any provision of part 1 of this subtitle, or any regulation or order issued under any such provision, shall upon conviction be fined not more than $5,000 or imprisoned not more than one year, or both; except that in the case of such violation by a person not an individual, the fine imposed upon such person shall be a fine not exceeding $100,000. (Pub. L. 93–406, title I, § 501, Sept. 2, 1974, 88 Stat. 891.)

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1028 of this title.

§ 1132. Civil enforcement.

(a) Persons empowered to bring a civil action.

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (i) of this section.

(b) Plans qualified under Internal Revenue Code.

In the case of a plan which is qualified under section 401(a), 403(a), or 405(a) of Title 26 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under subsection (a)(5) of this section with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if—

(1) requested by the Secretary of the Treasury, or

(2) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(c) Administrator's refusal to supply requested information.

Any administrator who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

(d) Status of employee benefit plan as entity.

(1) An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall

not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter.

(e) Jurisdiction.

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) Amount in controversy; citizenship of parties.

The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) Attorney's fees and costs.

In any action under this subchapter by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(h) Service upon Secretary of Labor and Secretary of the Treasury.

A copy of the complaint in any action under this subchapter by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) of this section which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) of this section on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) Administrative assessment of civil penalty.

In the case of a transaction prohibited by section 1106 of this title by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved (as defined in section 4975(f)(4) of Title 26); except that if the transaction is not corrected (in such manner as the Secretary shall prescribe by regulation, which regulations shall be consistent with section 4975(f)(5) of Title 26) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of Title 26.

(j) Direction and control of litigation by Attorney General.

In all civil actions under this subchapter, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of Title 28), but all such litigation shall be subject to the direction and control of the Attorney General.

(k) Jurisdiction of actions against the Secretary of Labor.

Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this chapter, or to compel him to take action required under this subchapter, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia. (Pub. L. 93–406, title I, § 502, Sept. 2, 1974, 88 Stat. 891.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (k), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1140 of this title.

§ 1133. Claims procedure.

In accordance with regulations of the Secretary, every employee benefit plan shall—

(1) provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

(Pub. L. 93–406, title I, § 503, Sept. 2, 1974, 88 Stat. 893.)

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1022 of this title.

§ 1134. Investigative authority.

(a) The Secretary shall have the power, in order to determine whether any person has violated or is about to violate any provision of this subchapter or any regulation or order thereunder—

(1) to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this subchapter, and

(2) to enter such places, inspect such books and records and question such persons as he may deem necessary to enable him to determine the facts relative to such investigation, if he has reasonable cause to believe there may exist a violation of this subchapter or any rule or regulation issued thereunder or if the entry is pursuant to an agreement with the plan.

The Secretary may make available to any person actually affected by any matter which is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation; except that any information obtained by the Secretary pursuant to section 6103(g) of Title 26 shall be made available only in accordance with regulations prescribed by the Secretary of the Treasury.

(b) The Secretary may not under the authority of this section require any plan to submit to the Secretary any books or records of the plan more than once in any 12 month period, unless the Secretary has reasonable cause to believe there may exist a violation of this subchapter or any regulation or order thereunder.

(c) For the purposes of any investigation provided for in this subchapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, records, and documents) are hereby made applicable (without regard to any limitation in such sections respecting persons, partnerships, banks, or common carriers) to the jurisdiction, powers, and duties of the Secretary or any officers designated by him. To the extent he considers appropriate, the Secretary may delegate his investigative functions under this section with respect to insured banks acting as fiduciaries of employee benefit plans to the appropriate Federal banking agency (as defined in section 1813(q) of Title 12). (Pub. L. 93–406, title I, § 504, Sept. 2, 1974, 88 Stat. 893.)

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1135 of this title.

§ 1135. Regulations.

Subject to subchapter II of this chapter and section 1029 of this title, the Secretary may prescribe such regulations as he finds necessary or appropriate to carry out the provisions of this subchapter. Among other things, such regulations may define accounting, technical and trade terms used in such provisions; may prescribe forms; and may provide for the keeping of books and records, and for the inspection of such books and records (subject to section 1134 (a) and (b) of this title). (Pub. L. 93–406, title I, § 505, Sept. 2, 1974, 88 Stat. 894.)

REFERENCES IN TEXT

Subchapter II of this chapter, referred to in text, was in the original, "title III" meaning title III of Pub. L. 93–406. Title III of Pub. L. 93–406, in addition to enacting subchapter II of this chapter, amended section 7701 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

§ 1136. Other agencies and departments.

In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary may make such arrangements or agreements for cooperation or mutual assistance in the performance of his functions under this subchapter and the functions of any such agency as he may find to be practicable and consistent with law. The Secretary may utilize, on a reimbursable or other basis, the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such information and facilities as he may request for his assistance in the performance of his functions under this subchapter. The Attorney General or his representative shall receive from the Secretary for appropriate action such evidence developed in the performance of his functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law. (Pub. L. 93–406, title I, § 506, Sept. 2, 1974. 88 Stat. 894.)

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

§ 1137. Administration.

(a) Subchapter II of chapter 5, and chapter 7, of Title 5 (relating to administrative procedure), shall be applicable to this subchapter.

(b) No employee of the Department of Labor or the Department of the Treasury shall administer or enforce this subchapter or the Internal Revenue Code of 1954 with respect to any employee benefit plan under which he is a participant or beneficiary, any employee organization of which he is a member, or any employer organization in which he has an interest. This subsection does not apply to an employee benefit plan which covers only employees of the United States. (Pub. L. 93–406, title I, § 507(a), (c), Sept. 2, 1974, 88 Stat. 894.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (b), is set out in Title 26, Internal Revenue Code.

CODIFICATION

Sections consist of subsecs. (a) and (c) of section 507 of Pub. L. 93–406. Subsec. (b) of section 507 of Pub. L. 93–406 amended section 5108 of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1144 of this title.

§ 1138. Appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out his functions and duties under this chapter. (Pub. L. 93–406, title I, § 508, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

This chapter, referred to in text was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

§ 1139. Separability of provisions.

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Pub. L. 93–406, title I, § 509, Sept. 2, 1974, 88 Stat 895.)

REFERENCES IN TEXT

This chapter, referred to in text was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

§ 1140. Interference with protected rights.

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. The provisions of section 1132 of this title shall be applicable in the enforcement of this section. (Pub. L. 93–406, title, I, § 510, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in text, is classified to section 301 et seq. of this title.

This chapter, referred to in text, was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

§ 1141. Coercive interference.

It shall be unlawful for any person through the use of fraud, force, violence, or threat of the use of force or violence, to restrain, coerce, intimidate, or attempt to restrain, coerce, or intimidate any participant or beneficiary for the purpose of interfering with or preventing the exercise of any right to which he is or may become entitled under the plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act. Any person who willfully violates this section shall be fined $10,000 or imprisoned for not more than one year, or both. (Pub. L. 93–406, title I, § 511, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in text, is classified to section 301 et seq. of this title.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

§ 1142. Advisory Council on Employee Welfare and Pension Benefit Plans.

(a) Establishment; membership; terms; appointment and reappointment; vacancies; quorum.

(1) There is hereby established an Advisory Council on Employee Welfare and Pension Benefit Plans (hereinafter in this section referred to as the "Council") consisting of fifteen members appointed by the Secretary. Not more than eight members of the Council shall be members of the same political party.

(2) Members shall be persons qualified to appraise the programs instituted under this chapter.

(3) Of the members appointed, three shall be representatives of employee organizations (at least one of whom shall be representative of any organization members of which are participants in a multiemployer plan); three shall be representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); three representatives shall be appointed from the general public, one of whom shall be a person representing those receiving benefits from a pension plan; and there shall be one representative each from the field of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and the accounting field.

(4) Members shall serve for terms of three years except that of those first appointed, five shall be appointed for terms of one year, five shall be appointed for terms of two years, and five shall be appointed for terms of three years. A member may be reappointed. A member appointed to fill a vacancy shall be appointed only for the remainder of such term. A majority of members shall constitute a quorum and action shall be taken only by a majority vote of those present and voting.

(b) Duties and functions.

It shall be the duty of the Council to advise the Secretary with respect to the carrying out of his functions under this chapter and to submit to the Secretary recommendations with respect thereto. The Council shall meet at least four times each year and at such other times as the Secretary requests. In his annual report submitted pursuant to section 1143 (b) of this title, the Secretary shall include each recommendation which he has received from the Council during the preceding calendar year.

(c) Executive secretary; secretarial and clerical services.

The Secretary shall furnish to the Council an executive secretary and such secretarial, clerical, and other services as are deemed necessary to conduct its business. The Secretary may call upon other agencies of the Government for statistical data, reports, and other information which will assist the Council in the performance of its duties.

(d) Compensation.

(1) Members of the Council shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Council.

(2) While away from their homes or regular places of business in the performance of services for Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of Title 5.

(e) Termination.

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the and at such other times as the Secretary requests. In Council. (Pub. L. 93–406, title I, § 512, Sept. 2, 1974, 88 Stat. 895.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(2),(b), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

The General Schedule, referred to in subsec. (d)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (e), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 (c) of this title.

§ 1143. Research, studies, and annual report.

(a)(1) The Secretary is authorized to undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans, including retirement, deferred compensation, and welfare plans, and types of plans not subject to this chapter.

(2) The Secretary is authorized and directed to undertake research studies relating to pension plans, including but not limited to (A) the effects of this subchapter upon the provisions and costs of pension plans, (B) the role of private pensions in meeting the economic security needs of the Nation, and (C) the operation of private pension plans including types and levels of benefits, degree of reciprocity or portability, and financial and actuarial characteristics and practices, and methods of encouraging the growth of the private pension system.

(3) The Secretary may, as he deems appropriate or necessary, undertake other studies relating to employee benefit plans, the matters regulated by this subchapter, and the enforcement procedures provided for under this subchapter.

(4) The research, surveys, studies, and publications referred to in this subsection may be conducted directly, or indirectly through grant or contract arrangements.

(b) The Secretary shall submit annually a report to the Congress covering his administration of this subchapter for the preceding year, and including (1) an explanation of any variances or extensions granted under section 1030, 1057, 1083, or 1084 of this title and the projected date for terminating the variance; (2) the status of cases in enforcement status; (3) recommendations received from the Advisory Council during the preceding year; and (4) such information, data, research findings, studies, and recommendations for further legislation in connection with the matters covered by this subchapter as he may find advisable.

(c) The Secretary is authorized and directed to cooperate with the Congress and its appropriate committees, subcommittees, and staff in supplying data and any other information, and personnel and services, required by the Congress in any study, examination, or report by the Congress relating to pension benefit plans established or maintained by States or their political subdivisions. (Pub. L. 93–406, title I, § 513, Sept. 2, 1974, 88 Stat. 896.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1142 of this title.

§ 1144. Other laws.

(a) Supersedure; effective date.

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

(b) Construction and appplication.

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

(c) Definitions.

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited.

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law. (Pub. L. 93–406, title I, § 514, Sept. 2, 1974, 88 Stat. 897.)

EFFECTIVE DATE

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1114 of this title.

SUBCHAPTER II.—JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1135 of this title.

SUBTITLE A.—JURISDICTION, ADMINISTRATION, AND ENFORCEMENT

§ 1201. Procedures in connection with the issuance of certain determination letters by the Secretary of the Treasury covering qualifications under Internal Revenue Code.

(a) Additional material required of applicants.

Before issuing an advance determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of Title 26, the Secretary of the Treasury shall require the person applying for the determination to provide, in addition to any material and information necessary for such determination, such other material and information as may reasonably be made available at the time such application is made as the Secretary of Labor may require under subchapter I of this chapter for the administration of that subchapter. The Secretary of the Treasury shall also require that the applicant provide evidence satisfactory to the Secretary that the applicant has notified each employee who qualifies as an interested party (within the meaning of regulations prescribed under section 7476(b)(1) of Title 26 (relating to declaratory judgments in connection with the qualification of certain retirement plans)) of the application for a determination.

(b) Opportunity to comment on application.

(1) Whenever an application is made to the Secretary of the Treasury for a determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the requirements of part I of subchapter D of chapter 1 of Title 26, the Secretary shall upon request afford an opportunity to comment on the application at any time within 45 days after receipt thereof to—

(A) any employee or class of employee qualifying as an interested party within the meaning of the regulations referred to in subsection (a) of this section.

(B) the Secretary of Labor, and

(C) the Pension Benefit Guaranty Corporation.

(2) The Secretary of Labor may not request an opportunity to comment upon such an application unless he has been requested in writing to do so by the Pension Benefit Guaranty Corporation or by the lesser of—

(A) 10 employees, or

(B) 10 percent of the employees

who qualify as interested parties within the meaning of the regulations referred to in subsection (a) of this section. Upon receiving such a request, the Secretary of Labor shall furnish a copy of the request to the Secretary of the Treasury within 5 days (excluding Saturdays, Sundays, and legal public holidays (as set forth in section 6103 of Title 5)).

(3) Upon receiving such a request from the Secretary of Labor, the Secretary of the Treasury shall furnish to the Secretary of Labor such information held by the Secretary of the Treasury relating to the application as the Secretary of Labor may request.

(4) The Secretary of Labor shall, within 30 days after receiving a request from the Pension Benefit

Guaranty Corporation or from the necessary number of employees who qualify as interested parties, notify the Secretary of the Treasury, the Pension Benefit Guaranty Corporation, and such employees with respect to whether he is going to comment on the application to which the request relates and with respect to any matters raised in such request on which he is not going to comment. If the Secretary of Labor indicates in the notice required under the preceding sentence that he is not going to comment on all or part of the matters raised in such request, the Secretary of the Treasury shall afford the corporation, and such employees, an opportunity to comment on the application with respect to any matter on which the Secretary of Labor has declined to comment.

(c) Intervention by Pension Benefit Guaranty Corporation or Secretary of Labor into declaratory judgment action under section 7476 of Title 26, action by Corporation authorized.

The Pension Benefit Guaranty Corporation and, upon petition of a group of employees referred to in subsection (b)(2) of this section, the Secretary of Labor, may intervene in any action brought for declaratory judgment under section 7476 of Title 26 in accordance with the provisions of such section. The Pension Benefit Guaranty Corporation is permitted to bring an action under such section 7476 under such rules as may be prescribed by the United States Tax Court.

(d) Notification and information by Secretary of the Treasury to Secretary of Labor upon issuance by Secretary of the Treasury of a determination letter to applicant.

If the Secretary of the Treasury determines that a plan or trust to which this section applies meets the applicable requirements of part I of subchapter D of chapter 1 of Title 26 and issues a determination letter to the applicant, the Secretary shall notify the Secretary of Labor of his determination and furnish such information and material relating to the application and determination held by the Secretary of the Treasury as the Secretary of Labor may request for the proper administration of subchapter I of this chapter. The Secretary of Labor shall accept the determination of the Secretary of the Treasury as prima facie evidence of initial compliance by the plan with the standards of parts 2, 3, and 4 of subtitle B of subchapter I of this chapter. If an application for such a determination is withdrawn, or if the Secretary of the Treasury issues a determination that the plan or trust does not meet the requirements of such part I, the Secretary shall notify the Secretary of Labor of the withdrawal or determination.

(e) Effective date.

This section does not apply with respect to an application for any plan received by the Secretary of the Treasury before the date on which section 410 of Title 26 applies to the plan, or on which such section will apply if the plan is determined by the Secretary to be a qualified plan. (Pub. L. 93–406, title III, § 3001, Sept. 2, 1974, 88 Stat. 995.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1140, 1141 of this title; title 26 section 7476.

§ 1202. Procedures with respect to continued compliance with Internal Revenue requirements relating to participation, vesting, and funding standards.

(a) Notification by Secretary of the Treasury to Secretary of Labor of issuance of a preliminary notice of intent to disqualify or of commencement of proceedings to determine satisfaction of requirements.

In carrying out the provisions of part I of subchapter D of chapter 1 of Title 26 with respect to whether a plan or a trust meets the requirements of section 410(a) or 411 of Title 26 (relating to minimum participation standards and minimum vesting standards, respectively), the Secretary of the Treasury shall notify the Secretary of Labor when the Secretary of the Treasury issues a preliminary notice of intent to disqualify related to the plan or trust or, if earlier, at the time of commencing any proceeding to determine whether the plan or trust satisfies such requirements. Unless the Secretary of the Treasury finds that the collection of a tax imposed under Title 26 is in jeopardy, the Secretary of the Treasury shall not issue a determination that the plan or trust does not satisfy the requirements of such section until the expiration of a period of 60 days after the date on which he notifies the Secretary of Labor of such review. The Secretary of the Treasury, in his discretion, may extend the 60-day period referred to in the preceding sentence if he determines that such an extension would enable the Secretary of Labor to obtain compliance with such requirements by the plan within the extension period. Except as otherwise provided in this chapter, the Secretary of Labor shall not generally apply part 2 of subtitle B of subchapter I of this chapter to any plan or trust subject to sections 410(a) and 411 of Title 26, but shall refer alleged general violations of the vesting or participation standards to the Secretary of the Treasury. (The preceding sentence shall not apply to matters relating to individuals benefits.)

(b) Notification to Secretary of Labor before Secretary of the Treasury sends notice of deficiency under section 4971 of Title 26; waiver of imposition of tax; requests for investigation; consultation.

Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4971 of Title 26 (relating to taxes on the failure to meet minimum funding standards), the Secretary of the Treasury shall notify the Secretary of Labor before sending a notice of deficiency with respect to any tax imposed under that section on an employer, and, in accordance with the provisions of subsection (d) of that section, afford the Secretary of Labor an opportunity to comment on the imposition of the tax in the case. The Secretary of the Treasury may waive the imposition of the tax imposed under section 4971(b) of Title 26 in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be commenced expeditiously with respect to whether the tax imposed under section 4971 of Title 26 should be applied with respect to any employer to which the request relates. The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of

section 412 of Title 26 (relating to minimum funding standards) and with respect to the funding standards applicable under subchapter I of this chapter in order to coordinate the rules applicable under such standards.

(c) Extended application of regulations prescribed by Secretary of the Treasury relating to minimum participation standards, minimum vesting standards, and minimum funding standards.

Regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, and 412 of Title 26 (relating to minimum participation standards, minimum vesting standards, and minimum funding standards, respectively) shall also apply to the minimum participation, vesting, and funding standards set forth in parts 2 and 3 of subtitle B of subchapter I of this chapter. Except as otherwise expressly provided in this chapter, the Secretary of Labor shall not prescribe other regulations under such parts, or apply the regulations prescribed by the Secretary of the Treasury under sections 410(a), 411, 412 of Title 26 and applicable to the minimum participation, vesting, and funding standards under such parts in a manner inconsistent with the way such regulations apply under sections 410(a), 411, and 412 of Title 26.

(d) Opportunity afforded Secretary of the Treasury to intervene in cases involving construction or application of minimum standards; review of briefs filed by Pension Benefit Guaranty Corporation or Secretary of Labor.

The Secretary of Labor and the Pension Benefit Guaranty Corporation, before filing briefs in any case involving the construction or application of minimum participation standards, minimum vesting standards, or minimum funding standards under subchapter I of this chapter shall afford the Secretary of the Treasury a reasonable opportunity to review any such brief. The Secretary of the Treasury shall have the right to intervene in any such case. (Pub. L. 93–406, title III, § 3002, Sept. 2, 1974, 88 Stat. 996.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (c), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note set out under section 1001 of this title.

CODIFICATION

In subsec. (a), reference to "of subtitle B" has been inserted in the reference to "part 2 . . . of subchapter I of this chapter" to reflect the apparent intent of Congress.

§ 1203. Procedures in connection with prohibited transactions.

(a) Notification to Secretary of Labor; opportunity to comment on imposition of tax under section 4975 of Title 26; waiver; requests for investigations.

Unless the Secretary of the Treasury finds that the collection of a tax is in jeopardy, in carrying out the provisions of section 4975 of Title 26 (relating to tax on prohibited transactions) the Secretary of the Treasury shall, in accordance with the provisions of subsection (h) of such section, notify the Secretary of Labor before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b) of such section, and, in accordance with the provisions of subsection (h) of such section, afford the Secretary an opportunity to comment on the imposition of the tax in any case. The Secretary of the Treasury shall have authority to waive the imposition of the tax imposed under section 4975(b) in appropriate cases. Upon receiving a written request from the Secretary of Labor or from the Pension Benefit Guaranty Corporation, the Secretary of the Treasury shall cause an investigation to be carried out with respect to whether the tax imposed by section 4975 of Title 26 should be applied to any person referred to in the request.

(b) Consultation.

The Secretary of the Treasury and the Secretary of Labor shall consult with each other from time to time with respect to the provisions of section 4975 of Title 26 (relating to tax on prohibited transactions) and with respect to the provisions of subchapter I of this chapter relating to prohibited transactions and exemptions therefrom in order to coordinate the rules applicable under such standards.

(c) Transmission of information to Secretary of the Treasury.

Whenever the Secretary of Labor obtains information indicating that a party-in-interest or disqualified person is violating section 1106 of this title, he shall transmit such information to the Secretary of the Treasury. (Pub. L. 93–406, title III, § 3003, Sept. 2, 1974, 88 Stat. 996.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 4975.

§ 1204. Coordination between the Department of the Treasury and the Department of Labor.

(a) Whenever in this chapter or in any provision of law amended by this chapter the Secretary of the Treasury and the Secretary of Labor are required to carry out provisions relating to the same subject matter (as determined by them) they shall consult with each other and shall develop rules, regulations, practices, and forms which, to the extent appropriate for the efficient administration of such provisions, are designed to reduce duplication of effort, duplication of reporting, conflicting or overlapping requirements, and the burden of compliance with such provisions by plan administrators, employers, and participants and beneficiaries.

(b) In order to avoid unnecessary expense and duplication of functions among Government agencies, the Secretary of the Treasury and the Secretary of Labor may make such arrangements or agreements for cooperation or mutual assistance in the performance of their functions under this chapter, and the functions of any such agencies as they find to be practicable and consistent with law. The Secretary of the Treasury and the Secretary of Labor may utilize, on a reimbursable or other basis, the facilities or services, of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services, of any of its employees, with the lawful consent of such department, agency, or establishment; and each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary of the Treasury and the Secretary of Labor and, to the extent permitted by law, to provide such information and facilities as they may

request for their assistance in the performance of their functions under this chapter. The Attorney General or his representative shall receive from the Secretary of the Treasury and the Secretary of Labor for appropriate action such evidence developed in the performance of their functions under this chapter as may be found to warrant consideration for criminal prosecution under the provisions of this subchapter or other Federal law. (Pub. L. 93–406, title III, § 3004, Sept. 2, 1974, 88 Stat. 998.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1021, 1024 of this title; title 26 sections 6057, 6058, 6059.

SUBTITLE B.—JOINT PENSION TASK FORCE; STUDIES

PART 1.—JOINT PENSION TASK FORCE

§ 1221. Establishment.

The staffs of the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, the Joint Committee on Internal Revenue Taxation, and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall carry out the duties assigned under this subchapter to the Joint Pension Task Force. By agreement among the chairmen of such Committees, the Joint Pension Task Force shall be furnished with office space, clerical personnel, and such supplies and equipment as may be necessary for the Joint Pension Task Force to carry out its duties under this subchapter. (Pub. L. 93–406, title III, § 3021, Sept. 2, 1974, 88 Stat. 999.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1222 of this title.

§ 1222. Duties.

(a) The Joint Pension Task Force shall, within 24 months after September 2, 1974, make a full study and review of—

(1) the effect of the requirements of section 411 of Title 26 and of section 1053 of this title to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements;

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under subchapter III of this chapter (relating to termination insurance) of plans established and maintained by small employers;

(4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(5) such other matter as any of the committees referred to in section 1221 of this title may refer to it.

(b) The Joint Pension Task Force shall report the results of its study and review to each of the committees referred to in section 1221 of this title. (Pub. L. 93–406, title III, § 3022, Sept. 2, 1974, 88 Stat. 999.)

PART 2.—OTHER STUDIES

§ 1231. Congressional study.

(a) The Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives and the Committee on Finance and the Committee on Labor and Public Welfare of the Senate shall study retirement plans established and maintained or financed (directly or indirectly) by the Government of the United States, by any State (including the District of Columbia) or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. Such study shall include an analysis of—

(1) the adequacy of existing levels of participation, vesting, and financing arrangements,

(2) existing fiduciary standards, and

(3) the necessity for Federal legislation and standards with respect to such plans.

In determining whether any such plan is adequately financed, each committee shall consider the necessity for minimum funding standards, as well as the taxing power of the government maintaining the plan.

(b) Not later than December 31, 1976, the Committee on Education and Labor and the Commitee on Ways and Means shall each submit to the House of Representatives the results of the studies conducted under this section, together with such recommendations as they deem appropriate. The Committee on Finance and the Committee on Labor and Public Welfare shall each submit to the Senate the results of the studies conducted under this section together with such recommendations as they deem appropriate not later than such date. (Pub. L. 93–406, title III, § 3031, Sept. 2, 1974, 88 Stat. 999.)

§ 1232. Protection for employees under Federal procurement, construction, and research contracts and grants.

(a) Study and investigation by Secretary of Labor.

The Secretary of Labor shall, during the 2-year period beginning on September 2, 1974, conduct a full and complete study and investigation of the steps necessary to be taken to insure that professional, scientific, and technical personnel and others working in associated occupations employed under Federal procurement, construction, or research contracts or grants will, to the extent feasible, be protected against forfeitures of pension or retirement rights or benefits, otherwise provided, as a consequence of job transfers or loss of employment resulting from terminations or modifications of Federal contracts, grants, or procurement policies. The Secretary of Labor shall report the results of his study and investigation to the Congress within 2 years after September 2, 1974. The Secretary of Labor is authorized, to the extent provided by law, to obtain the services of private research institutions and such other persons by contract or other arrangement as he determines necessary in carrying out the provisions of this section.

(b) Consultation.

In the course of conducting the study and investigation described in subsection (a) of this section, and

in developing the regulations referred to in subsection (c) of this section, the Secretary of Labor shall consult—

(1) with appropriate professional societies, business organizations, and labor organizations, and

(2) with the heads of interested Federal departments and agencies.

(c) Regulations.

Within 1 year after the date on which he submits his report to the Congress under subsection (a) of this section, the Secretary of Labor shall, if he determines it to be feasible, develop regulations which will provide the protection of pension and retirement rights and benefits referred to in subsection (a) of this section.

(d) Congressional review of regulations; resolution of disapproval.

(1) Any regulations developed pursuant to subsection (c) of this section shall take effect if, and only if—

(A) the Secretary of Labor, not later than the day which is 3 years after September 2, 1974, delivers a copy of such regulations to the House of Representatives and a copy to the Senate, and

(B) before the close of the 120-day period which begins on the day on which the copies of such regulations are delivered to the House of Representatives and to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of a majority of those present and voting in that House, a resolution of disapproval.

(2) For purposes of this subsection, the term "resolution of disapproval" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the —— does not favor the taking effect of the regulations transmitted to the Congress by the Secretary of Labor on ——", the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(3) A resolution of disapproval in the House of Representatives shall be referred to the Committee on Education and Labor. A resolution of disapproval in the Senate shall be referred to the Committee on Labor and Public Welfare.

(4) (A) If the committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval.

(5) (A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(6) (A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(7) Whenever the Secretary of Labor transmits copies of the regulations to the Congress, a copy of such regulations shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(8) The 120 day period referred to in paragraph (1) shall be computed by excluding—

(A) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(B) any Saturday and Sunday, not excluded under subparagraph (A), when either House is not in session.

(9) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in paragraph (2); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(Pub. L. 93–406, title III, § 3032, Sept. 2, 1974, 88 Stat. 1000.)

SUBTITLE C.—ENROLLMENT OF ACTUARIES

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1023 of this title; title 26 section 7701.

§ 1241. Joint Board for the Enrollment of Actuaries.

The Secretary of Labor and the Secretary of the Treasury shall, not later than the last day of the first calendar month beginning after September 2, 1974, establish a Joint Board for the Enrollment of Actuaries (hereinafter in this part referred to as the "Joint Board"). (Pub. L. 93–406, title III, § 3041, Sept. 2, 1974, 88 Stat. 1002.)

§ 1242. Enrollment by Board; standards and qualifications; suspension or termination of enrollment.

(a) The Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services with respect to plans in which this chapter applies and, upon application by any individual, shall enroll such individual if the Joint Board finds that such individual satisfies such standards and qualifications. With respect to individuals applying for enrollment before January 1, 1976, such standards and qualifications shall include a requirement for an appropriate period of responsible actuarial experience relating to pension plans. With respect to individuals applying for enrollment on or after January 1, 1976, such standards and qualifications shall include—

(1) education and training in actuarial mathematics and methodology, as evidenced by—

(A) a degree in actuarial mathematics or its equivalent from an accredited college or university,

(B) successful completion of an examination in actuarial mathematics and methodology to be given by the Joint Board, or

(C) successful completion of other actuarial examinations deemed adequate by the Joint Board, and

(2) an appropriate period of responsible actuarial experience.

Notwithstanding the preceding provisions of this subsection, the Joint Board may provide for the temporary enrollment for the period ending January 1, 1976, of actuaries under such interim standards as it deems adequate.

(b) The Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Joint Board finds that such individual—

(1) has failed to discharge his duties under this chapter, or

(2) does not satisfy the requirements for enrollment as in effect at the time of his enrollment.

The Joint Board may also, after notice and opportunity for hearing, suspend or terminate the temporary enrollment of an individual who fails to discharge his duties under this chapter or who does not satisfy the interim enrollment standards. (Pub. L. 93–406, title III, § 3042, Sept. 2, 1974, 88 Stat. 1002.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

SUBCHAPTER III.—PLAN TERMINATION INSURANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1103, 1144, 1222 of this title; title 26 section 6103.

SUBTITLE A.—PENSION BENEFIT GUARANTY CORPORATION

§ 1301. Definitions.

(a) For purposes of this subchapter, the term—

(1) "administrator" means the person or persons described in paragraph (16) of section 1002 of this title;

(2) "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of Title 26, determined without regard to section 1563(a)(4) and (e)(3)(C) of Title 26, as one employer) who has made contributions to or under a plan under which more than one employer makes contributions for each of—

(A) the two immediately preceding plan years, or

(B) the second and third preceding plan years,

equaling or exceeding 10 percent of all employer contributions paid to or under that plan for each such year;

(3) "multiemployer plan" means a multiemployer plan as defined in section 414(f) of Title 26 (as added by this Act but without regard to whether such section is in effect on September 2, 1974);

(4) "corporation", except where the context clearly requires otherwise, means the Pension Benefit Guaranty Corporation established under section 1302 of this title.

(5) "fund" means the appropriate fund established under section 1305 of this title;

(6) "basic benefits" means benefits guaranteed under section 1322 of this title other than under section 1322(c) of this title; and

(7) "non-basic benefits" means benefits guaranteed under section 1322(c) of this title.

(b) An individual who owns the entire interest in an unincorporated trade or business is treated as his own employer, and a partnership is treated as the employer of each partner who is an employee within the meaning of section 401(c)(1) of Title 26. For purposes of this subchapter, under regulations prescribed by the corporation, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer and all such trades and businesses as a single employer. The regulations prescribed under the preceding sentence shall be consistent and coextensive with regulations prescribed for similar purposes by the Secretary of the Treasury under section 414(c) of Title 26. (Pub. L. 93–406, title IV, § 4001, Sept. 2, 1974, 88 Stat. 1003.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(3), is the Employee Retirement Income Security Act of 1974, Pub. L. 93–406,

Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93-406 to this Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in section 1381(b), (c) of this title, see section 1381 (a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1366 of this title.

§ 1302. Establishment; powers; board of directors; board meetings; bylaws and rules; exemption from taxation; budget; advisory committee.

(a) There is established within the Department of Labor a body corporate to be known as the Pension Benefit Guaranty Corporation. In carrying out its functions under this subchapter, the corporation shall be administered by the chairman of the board of directors in accordance with policies established by the board. The purposes of this subchapter, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this subchapter applies, and

(3) to maintain premiums established by the corporation under section 1306 of this title at the lowest level consistent with carrying out its obligations under this subchapter.

(b) To carry out the purposes of this subchapter, the corporation has the powers conferred on a nonprofit corporation under the District of Columbia Nonprofit Corporation Act and, in addition to any specific power granted to the corporation elsewhere in this subchapter or under that Act, the corporation has the power—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, in any court, State or Federal;

(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) to adopt, amend, and repeal, by the board of directors, bylaws, rules, and regulations relating to the conduct of its business and the exercise of all other rights and powers granted to it by this Act;

(4) to conduct its business (including the carrying on of operations and the maintenance of offices) and to exercise all other rights and powers granted to it by this Act in any State or other jurisdiction without regard to qualification, licensing, or other requirements imposed by law in such State or other jurisdiction;

(5) to lease, purchase, accept gifts or donations of, or otherwise to acquire, to own, hold, improve, use, or otherwise deal in or with, and to sell, convey, mortgage, pledge, lease, exchange, or otherwise dispose of, any property, real, personal, or mixed, or any interest therein wherever situated;

(6) to appoint and fix the compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, and, to the extent desired by the corporation, require bonds for them and fix the penalty thereof, and to appoint and fix the compensation of experts and consultants in accordance with the provisions of section 3109 of Title 5;

(7) to utilize the personnel and facilities of any other agency or department of the United States Government, with or without reimbursement, with the consent of the head of such agency or department; and

(8) to enter into contracts, to execute instruments, to incur liabilities, and to do any and all others acts and things as may be necessary or incidental to the conduct of its business and the exercise of all other rights and powers granted to the corporation by this chapter.

(c) The board of directors of the corporation consists of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Commerce. Members of the board shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the board. The Secretary of Labor is the chairman of the board of directors.

(d) The board of directors shall meet at the call of its chairman, or as otherwise provided by the bylaws of the corporation.

(e) As soon as practicable, but not later than 180 days after September 2, 1974, the board of directors shall adopt initial bylaws and rules relating to the conduct of the business of the corporation. Thereafter, the board of directors may alter, supplement, or repeal any existing bylaw or rule, and may adopt additional bylaws and rules from time to time as may be necessary. The chairman of the board shall cause a copy of the bylaws of the corporation to be published in the Federal Register not less than once each year.

(f)(1) The corporation, its property, its franchise, capital, reserves, surplus, and its income (including, but not limited to, any income of any fund established under section 1305 of this title), shall be exempt from all taxation now or hereafter imposed by any State or local taxing authority, except that any real property and any tangible personal property (other than cash and securities) of the corporation shall be subject to State and local taxation to the same extent according to its value as other real and tangible personal property is taxed.

(2) The receipts and disbursements of the corporation in the discharge of its functions shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitations imposed by statute on budget outlays of the United States. Except as explicitly provided in this subchapter, the United States is not liable for any obligation or liability incurred by the corporation.

(g)(1) There is established an advisory committee to the corporation, for the purpose of advising the corporation as to its policies and procedures relating to (A) the appointment of trustees in termination proceedings, (B) investment of moneys, (C) whether plans being terminated should be liquidated imme-

diately or continued in operation under a trustee, and (D) such other issues as the corporation may request from time to time. The advisory committee may also recommend persons for appointment as trustees in termination proceedings, make recommendations with respect to the investment of moneys in the funds, and advise the corporation as to whether a plan subject to being terminated should be liquidated immediately or continued in operation under a trustee.

(2) The advisory committee consists of seven members appointed, from among individuals recommended by the board of directors, by the President. Of the seven members, two shall represent the interests of employee organizations, two shall represent the interests of employers who maintain pension plans, and three shall represent the interests of the general public. The President shall designate one member as chairman at the time of the appointment of that member.

(3) Members shall serve for terms of 3 years each, except that, of the members first appointed, one of the members representing the interests of employee organizations, one of the members representing the interests of employers, and one of the members representing the interests of the general public shall be appointed for terms of 2 years each, one of the members representing the interests of the general public shall be appointed for a term of 1 year, and the other members shall be appointed to full 3-year terms. The advisory committee shall meet at least six times each year and at such other times as may be determined by the chairman or requested by any three members of the advisory committee.

(4) Members shall be chosen on the basis of their experience with employee organizations, with employers who maintain pension plans, with the administration of pension plans, or otherwise on account of outstanding demonstrated ability in related fields. Of the members serving on the advisory committee at any time, no more than four shall be affiliated with the same political party.

(5) An individual appointed to fill a vacancy occurring other than by the expiration of a term of office shall be appointed only for the unexpired term of the member he succeeds. Any vacancy occurring in the office of a member of the advisory committee shall be filled in the manner in which that office was originally filled.

(6) The advisory committee shall appoint and fix the compensation of such employees as it determines necessary to discharge its duties, including experts and consultants in accordance with the provisions of section 3109 of Title 5. The corporation shall furnish to the advisory committee such professional, secretarial, and other services as the committee may request.

(7) Members of the advisory committee shall, for each day (including traveltime) during which they are attending meetings or conferences of the committee or otherwise engaged in the business of the committee, be compensated at a rate fixed by the corporation which is not in excess of the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5.

(8) The Federal Advisory Committee Act does not apply to the advisory committee established by this subsection. (Pub. L. 93–406, title IV, § 4002 (a), (b), (d)–(g)(2), (h), Sept. 2, 1974, 88 Stat. 1004, 1005.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b), is classified to section 29–1001 et seq. of the District of Columbia Code.

This chapter, referred to in subsec. (b)(8), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

The General Schedule, referred to in subsec. (g)(7), is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (g)(8), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section consists of subsecs. (a), (b), (d), (e), (f), (g)(1), (2), and (h) of section 1002 of Pub. L. 93–406. Subsec. (c) in the original amended section 5108 of Title 5, Government Organization and Employees, and section (g)(3) in the original amended section 846 of Title 31, Money and Finance.

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381 (b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1301 of this title.

§ 1303. Operation of corporation.

(a) Investigatory authority.

The corporation may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this subchapter or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the corporation shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) Discovery powers vested in board members or officers designated by the chairman.

For the purpose of any such investigation, or any other proceeding under this subchapter, any member of the board of directors of the corporation, or any officer designated by the chairman, may administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the corporation deems relevant or material to the inquiry.

(c) Contempt.

In the case of contumacy by, or refusal to obey a subpena issued to, any person, the corporation may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. The court may issue

an order requiring such person to appear before the corporation, or member or officer designated by the corporation, and to produce records or to give testimony related to the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district in which such person is an inhabitant or may be found.

(d) Cooperation with other governmental agencies.

In order to avoid unnecessary expense and duplication of functions among government agencies, the corporation may make such arrangements or agreements for cooperation or mutual assistance in the performance of its functions under this subchapter as is practicable and consistent with law. The corporation may utilize the facilities or services of any department, agency, or establishment of the United States or of any State or political subdivision of a State, including the services of any of its employees, with the lawful consent of such department, agency, or establishment. The head of each department, agency, or establishment of the United States shall cooperate with the corporation and, to the extent permitted by law, provide such information and facilities as it may request for its assistance in the performance of its functions under this subchapter. The Attorney General or his representative shall receive from the corporation for appropriate action such evidence developed in the performance of its functions under this subchapter as may be found to warrant consideration for criminal prosecution under the provisions of this or any other Federal law.

(e) Civil actions by corporation; jurisdiction; process; expeditious handling of case; costs.

(1) Civil actions may be brought by the corporation for appropriate relief, legal or equitable or both, to redress violations of the provisions of this subchapter.

(2) Except as otherwise provided in this subchapter, where such an action is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the violation took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(3) The district courts of the United States shall have jurisdiction of actions brought by the corporation under this subchapter without regard to the amount in controversy in any such action.

(4) Upon application by the corporation to a court of the United States for expedited handling of any case in which the corporation is a party, it is the duty of that court to assign such case for hearing at the earliest practical date and to cause such case to be in every way expedited.

(5) In any action brought under this subchapter, whether to collect premiums, penalties, and interest under section 1307 of this title or for any other purpose, the court may award to the corporation all or a portion of the costs of litigation incurred by the corporation in connection with such action.

(f) Civil actions against the corporation; appropriate court; jurisdiction.

Any participant, beneficiary, plan administrator, or employee adversely affected by any action of the corporation, or by a receiver or trustee appointed by the corporation, with respect to a plan in which such participant, beneficiary, plan administrator or employer has an interest, may bring an action against the corporation, receiver, or trustee in the appropriate court. For purposes of this subsection the term "appropriate court" means the United States district court before which proceedings under section 1341 or 1342 of this title are being conducted, or if no such proceedings are being conducted the United States district court for the district in which the plan has its principal office, or the United States district court for the District of Columbia. The district courts of the United States have jurisdiction of actions brought under this subsection without regard to the amount in controversy. (Pub. L. 93–406, title IV, § 4003, Sept. 2, 1974, 88 Stat. 1006.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381 (b), (c) of this title, see section 1381 (a) of this title.

§ 1304. Temporary authority for initial period.

(a) Appointment of receiver.

Notwithstanding anything to the contrary in this subchapter, the corporation may, upon receipt of notice that a plan is to be terminated or upon making a determination described in section 1342 of this title, appoint a receiver whose powers shall take effect immediately. The receiver shall assume control of such plan and its assets, protecting the interests of all interested persons during subsequent proceedings.

(b) Court approval of appointment of receiver.

(1) Within a reasonable time, not exceeding 20 days, after the appointment of a receiver under subsection (a) of this section, the corporation shall apply to an appropriate United States district court for a decree approving such appointment. The court to which application is made shall issue a decree approving such appointment unless it determines that such approval would not be in the best interests of the participants and beneficiaries of the plan.

(2) If the court to which application is made under paragraph (1) dismisses the application with prejudice, or if the corporation fails to apply for a decree under paragraph (1) within 20 days after the appointment of the receiver, the receiver shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of the 20 day period. The receiver shall not be liable to the plan or to any other person for his acts as receiver o'her than for willful misconduct, or for conduct in violation of the provisions of part 4 of subpart B of subchapter I of this chapter (except to the extent that the provisions of section 1342(d)(1)(A) of this title provide otherwise).

(c) Application to district court by plan administrator for appointment of receiver as alternative to appointment of receiver by corporation.

The corporation is authorized, as an alternative to appointing a receiver under subsection (a) of this section, to direct a plan administrator to apply to a

district court of the United States for the appointment of a receiver to assume control of the plan and its assets for the purpose of protecting the interests of all interested persons until the plan can be terminated under the provisions of this subchapter.

(d) Powers and functions of receiver.

A receiver appointed under this section has the powers of a trustee under section 1342(d)(1)(A) and (B) of this title, and shall report to the corporation and the court on the plan from time to time as required by either the corporation or the court. As soon as practicable after his appointment, a receiver appointed under this section shall determine whether the assets of the plan are sufficient to discharge when due all obligations of the plan with respect to benefits guaranteed under this subchapter in accordance with the requirements of section 1344 of this title. If the determination of the receiver is approved by the corporation and the court, the receiver shall proceed as if he were a trustee appointed under section 1342 of this title.

(e) Initial period set at 270 days following September 2, 1974.

A receiver may not be appointed under this section more than 270 days after September 2, 1974.

(f) Additional corporate powers during 270-day initial period.

In addition to its other powers under this subchapter, for only the first 270 days after September 2, 1974, the corporation may—

(1) contract for printing without regard to the provisions of chapter 5 of Title 44,

(2) waive any notice required under this subchapter if the corporation finds that a waiver is necessary or appropriate,

(3) extend the 90-day period referred to in section 1341(a) of this title for an additional 90 days without the agreement of the plan administrator and without application to a court as required under section 1341(d) of this title, and

(4) waive the application of the provisions of sections 1362, 1363, and 1364 of this title to, or reduce the liability imposed under such sections on, any employer with respect to a plan terminating during that 270 day period if the corporation determines that such waiver or reduction is necessary to avoid unreasonable hardship in any case in which the employer was not able, as a practical matter, to continue the plan.

(Pub. L. 93–406, title IV, § 4004, Sept. 2, 1974, 88 Stat. 1008.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381 (b), (c) of this title, see section 1381(a) of this title.

§ 1305. Pension benefit guaranty funds.

(a) Establishment of four revolving funds on books of Treasury of the United States.

There are established on the books of the Treasury of the United States four revolving funds to be used by the corporation in carrying out its duties under this subchapter. One of the funds shall be used in connection with benefits guaranteed under sections 1322 and 1323 of this title (but not non-basic benefits) with respect to plans other than multiemployer plans, one of the funds shall be used with respect to such benefits guaranteed under such sections (other than non-basic benefits) for multiemployer plans, one of the funds shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 1322 of this title, for plans which are not multiemployer plans, and the remaining fund shall be used with respect to non-basic benefits, if any are guaranteed by the corporation under section 1322 of this title, for multiemployer plans. Whenever in this subchapter reference is made to the term "fund" the reference shall be considered to refer to the appropriate fund established under this subsection.

(b) Credits to funds; availability of funds; investment of moneys in excess of current needs.

(1) Each fund established under this section shall be credited with the appropriate portion of—

(A) funds borrowed under subsection (c) of this section,

(B) premiums, penalties, interest, and charges collected under this subchapter,

(C) the value of the assets of a plan administered under section 1342 of this title by a trustee to the extent that they exceed the liabilities of such plan,

(D) the amount of any employer liability payments under subtitle D, to the extent that such payments exceed liabilities of the plan (taking into account all other plan assets),

(E) earnings on investments of the fund or on assets credited to the fund under this subsection, and

(F) receipts from any other operations under this subchapter.

(2) Subject to the provisions of subsection (a) of this section, each fund shall be available—

(A) for making such payments as the corporation determines are necessary to pay benefits guaranteed under section 1322 of this title,

(B) for making such payments as the corporation determines are necessary under section 1323 of this title,

(C) to purchase assets from a plan being terminated by the corporation when the corporation determines such purchase will best protect the interests of the corporation, participants in the plan being terminated, and other insured plans.

(D) to repay to the Secretary of the Treasury such sums as may be borrowed (together with interest thereon) under subsection (c) of this section, and

(E) to pay the operational and administrative expenses of the corporation, including reimbursement of the expenses incurred by the Department of the Treasury in maintaining the funds, and the Comptroller General in auditing the corporation.

(3) Whenever the corporation determines that the moneys of any fund are in excess of current needs, it may request the investment of such amounts as it determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States but, until all borrowings under subsection (c) of this section have been repaid, the obligations in which such excess moneys are invested may not yield a rate of return in excess of the rate of interest payable on such borrowings.

(c) Authority to issue notes or other obligations; purchase by Secretary of the Treasury as public debt transaction.

The corporation is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount of not to exceed $100,000,000, in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations of the corporation. The Secretary of the Treasury is authorized and directed to purchase any notes or other obligations issued by the corporation under this subsection, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. (Pub. L. 93–406, title IV, § 4005, Sept. 2, 1974, 88 Stat. 1009.)

REFERENCES IN TEXT

The Second Liberty Bond Act, referred to in subsec. (c), is act Sept. 21, 1917, 56, 40 Stat. 288, as amended, which was classified to section 745, former section 747, sections 752, 752a, 753, 754, 754a, 754b, 757, 757b, and 757c, former section 757c–1, sections 757c–2, 757c–3, 757c–4, 757d, 757e, 758, 760, and 764, former section 765, and sections 766, 769, 771, 773, 774, and 801 of Title 31, Money and Finance.

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381 (b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1302, 1308, 1381 of this title.

§ 1306. Premium rates.

(a)(1) The corporation shall prescribe such insurance premium rates and such coverage schedules for the application of those rates as may be necessary to provide sufficient revenue to the fund for the corporation to carry out its functions under this subchapter. The premium rates charged by the corporation for any period shall be uniform for all plans, other than multiemployer plans insured by the corporation, with respect to basic benefits guaranteed by it under section 1322 of this title, and shall be uniform for all multiemployer plans with respect to basic benefits guaranteed by it under such section. The premium rates charged by the corporation for any period for non-basic benefits guaranteed by it shall be uniform by category of non-basic benefit guaranteed, shall be based on the risk insured in each category, and shall reflect the experience of the corporation (including reasonably anticipated experience) in guaranteeing such benefits.

(2) The corporation shall maintain separate coverage schedules for—

(A) basic benefits guaranteed by it under section 1322 of this title for—

(i) plans which are multiemployer plans, and

(ii) plans which are not multiemployer plans,

(B) employers insured under section 1323 of this title against liability under subtitle D of this subchapter, and

(C) non-basic benefits.

Except as provided in paragraph (3), the corporation may revise such schedules whenever it determines that revised rates are necessary, but a revised schedule described in subparagraph (A) shall apply only to plan years beginning more than 30 days after the date on which the Congress approves such revised schedule by a concurrent resolution.

(3) Except as provided in paragraph (4), the rate for all plans for benefits guaranteed under section 1322 of this title (other than non-basic benefits) with respect to plan years ending no more than 35 months after the effective date of this subchapter is—

(A) in the case of each plan which is not a multiemployer plan, an amount equal to one dollar for each individual who is a participant in such plan at any time during the plan year; and

(B) in the case of a multiemployer plan, an amount equal to fifty cents for each individual who is a participant in such plan at any time during such plan year.

The rate applicable under this paragraph to any plan the plan year of which does not begin on September 2, 1974, is a fraction of the rate described in the preceding sentence, the numerator of which is the number of months which end before the date on which the new plan year commences and the denominator of which is 12. The corporation is authorized to prescribe regulations under which the rate described in subparagraph (B) will not apply to the same participant in any multiemployer plan more than once for any plan year.

(4) Upon notification filed with the corporation not less than 60 days after the date on which the corporation publishes the rates applicable under paragraph (5), at the election of a plan the rate applicable to that plan with respect to the second full plan year to which this section applies beginning after September 2, 1974, shall be the greater of—

(A) an alternative rate determined under paragraph (5), or

(B) one-half of the rate applicable to the plan under paragraph (3).

In the case of a multiemployer plan, the rate prescribed by this paragraph (at the election of a plan) for the second full plan year is also the applicable rate for plan years succeeding the second full plan year and ending before the full plan year first commencing after December 31, 1977.

(5) In carrying out its authority under paragraph (1) to establish premium rates and bases for basic benefits guaranteed under section 1322 of this title the corporation shall establish such rates and bases in coverage schedules for plan years beginning 24 months or more after September 2, 1974, in accord-

ance with the provisions of this paragraph. The corporation shall publish the rate schedules first applicable under this paragraph in the Federal Register not later than 270 days after September 2, 1974.

(A) The corporation may establish annual premiums composed of—

(i) a rate applicable to the excess, if any, of the present value of the basic benefits of the plan which are guaranteed over the value of the assets of the plan, not in excess of 0.1 percent for plans which are not multiemployer plans and not in excess of 0.025 percent for multiemployer plans, and

(ii) an additional charge based on the rate applicable to the present value of the basic benefits of the plan which are guaranteed, determined separately for multiemployer plans and for plans which are not multiemployer plans.

The rate for the additional charge referred to in clause (ii) shall be set by the corporation for every year at a level (determined separately for multiemployer plans and for plans which are not multiemployer plans) which the corporation estimates will yield total revenue approximately equal to the total revenue to be derived by the corporation from the premiums referred to in clause (i) of this subparagraph.

(B) The corporation may establish annual premiums based on—

(i) the number of participants in a plan, but such premium rates shall not exceed the rates described in paragraph (3),

(ii) unfunded basic benefits guaranteed under this subchapter, but such premium rates shall not exceed the limitations applicable under subparagraph (A)(i), or

(iii) total guaranteed basic benefits, but such premium rates may not exceed the rates determined under subparagraph (A)(ii).

If the corporation uses 2 or more of the rate bases described in this subparagraph, the premium rates shall be designed to produce approximately equal amounts of aggregate premium revenue from each of the rate bases used.

(6) The corporation shall by regulation define the terms "value of the assets" and "present value of the benefits of the plan which are guaranteed" in a manner consistent with the purposes of this subchapter and the provisions of this section.

(b)(1) In order to place a revised coverage schedule (other than a schedule described in subsection (a)(2)(B) or (C) of this section in effect, the corporation shall transmit the proposed schedule, its proposed effective date, and the reasons for its proposal to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives, and to the Committee on Finance and the Committee on Labor and Public Welfare of the Senate.

(2) The succeeding paragraphs of this subsection are enacted by Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they shall be deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described in paragraph (3). They shall supersede other rules only to the extent that they are inconsistent therewith. They are enacted with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any rule of that House.

(3) For the purpose of the succeeding paragraphs of this subsection, "resolution" means only a concurrent resolution, the matter after the resolving clause of which is as follows: "That the Congress favors the proposed revised coverage schedule transmitted to Congress by the Pension Benefit Guaranty Corporation on ———.", the blank space therein being filled with the date on which the corporation's message proposing the rate was delivered.

(4) A resolution shall be referred to the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives and to the Committee on Finance and the Committee on Labor and Public Welfare of the Senate.

(5) If a committee to which has been referred a resolution has not reported it before the expiration of 10 calendar days after its introduction, it shall then (but not before) be in order to move to discharge the committee from further consideration of that resolution, or to discharge the committee from further consideration of any other resolution with respect to the proposed adjustment which has been referred to the committee. The motion to discharge may be made only by a person favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposed rate), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposed rate.

(6) When a committee has reported, or has been discharged from further consideration of a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(7) Motions to postpone, made with respect to the discharge from committee, or the consideration of, a resolution and motions to proceed to the consideration of other business shall be decided without debate. Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution shall be decided without debate. (Pub. L. 93–406, title IV, § 4006, Sept. 2, 1974, 88 Stat. 4006.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381 (b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1302, 1362 of this title.

§ 1307. Payment of premiums.

(a) Premiums payable when due; accrual.

The plan administrator of each plan shall pay the premiums imposed by the corporation under this subchapter with respect to that plan when they are due. Any employer obtaining contingent liability coverage under section 1323 of this title shall pay the premiums imposed by the corporation under that section when due. Premiums under this subchapter are payable at the time, and on an estimated, advance, or other basis, as determined by the corporation. Premiums imposed by this subchapter on September 2, 1974 (applicable to that portion of any plan year during which such date occurs) are due within 30 days after such date. Premiums imposed by this subchapter on the first plan year commencing after September 2, 1974, are due within 30 days after such plan year commences. Premiums shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure, or until a trustee is appointed pursuant to section 1342 of this title, whichever is earlier.

(b) Late payment charge; waiver.

If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the plan administrator obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the plan administrator, but the corporation may not grant a waiver if it appears that the plan administrator will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of Title 26 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(c) Civil action to recover premium penalty and interest.

If any plan administrator fails to pay a premium when due, the corporation is authorized to bring a civil action in any district court of the United States within the jurisdiction of which the plan assets are located, the plan is administered, or in which a defendant resides or is found for the recovery of the amount of the premium penalty, and interest, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this subsection by the corporation without regard to the amount in controversy.

(d) Basic benefits guarantee not stopped by plan administrator's failure to pay premiums when due.

The corporation shall not cease to guarantee basic benefits on account of the failure of a plan administrator to pay any premium when due. (Pub. L. 93–406, title IV, § 4007, Sept. 2, 1974, 88 Stat. 1013.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381 (b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1323 of this title.

§ 1308. Annual report by the corporation.

As soon as practicable after the close of each fiscal year the corporation shall transmit to the President and the Congress a report relative to the conduct of its business under this subchapter for that fiscal year. The report shall include financial statements setting forth the finances of the corporation at the end of such fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year and shall include an actuarial evaluation of the expected operations and status of the funds established under section 1305 of this title for the next five years (including a detailed statement of the actuarial assumptions and methods used in making such evaluation). (Pub. L. 93–406, title IV, § 4008, Sept. 2, 1974, 88 Stat. 1014.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381 (b), (c) of this title, see section 1381(a) of this title.

§ 1309. Portability assistance.

The corporation shall provide advice and assistance to individuals with respect to evaluating the economic desirability of establishing individual retirement accounts or other forms of individual retirement savings for which a deduction is allowable under section 219 of Title 26 and with respect to evaluating the desirability, in particular cases, of transferring amounts representing an employee's interest in a qualified plan to such an account upon the employee's separation from service with an employer. (Pub. L. 93–406, title IV, § 4009, Sept. 2, 1974, 88 Stat. 1014.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381 (b), (c) of this title, see section 1381(a) of this title.

SUBTITLE B.—COVERAGE

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in section 1361 of this title.

§ 1321. Plans covered.

(a) Except as provided in subsection (b) of this section, this section applies to any plan (including a successor plan) which, for a plan year—

(1) is an employee pension benefit plan (as defined in paragraph (2) of section 1002 of this title) established or maintained—

(A) by an employer engaged in commerce or in any industry or activity affecting commerce, or

(B) by any employee organization, or organization representing employees, engaged in commerce or in any industry or activity affecting commerce, or

(C) by both,

which has, in practice, met the requirements of part I of subchapter D of chapter 1 of Title 26 (as in effect for the preceding 5 plan years of the plan) applicable to plans described in paragraph (2) for the preceding 5 plan years; or

(2) is, or has been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of Title 26, or which meets, or has been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of Title 26.

For purposes of this subchapter, a successor plan is considered to be a continuation of a predecessor plan. For this purpose, a successor plan is a plan which covers a group of employees which includes substantially the same employees as a previously established plan, and provides substantially the same benefits as that plan provided.

(b) This section does not apply to any plan—

(1) which is an individual account plan, as defined in paragraph (34) of section 1002 of this title,

(2) established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act,

(3) which is a church plan as defined in section 414(e) of Title 26, unless that plan has made an election under section 410(d) of Title 26, and has notified the corporation in accordance with procedures prescribed by the corporation, that it wishes to have the provisions of this part apply to it,

(4)(A) established and maintained by a society, order, or association described in section 501(c)(8) or (9) of Title 26, if no part of the contributions to or under the plan is made by employers of participants in the plan, or

(B) of which a trust described in section 501(c)(18) of Title 26 is a part;

(5) which has not at any time after September 2, 1974, provided for employer contributions;

(6) which is unfunded and which is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(7) which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens;

(8) which is maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of Title 26 on plans to which that section applies, without regard to whether the plan is funded, and, to the extent that a separable part of a plan (as determined by the corporation) maintained by an employer is maintained for such purpose, that part shall be treated for purposes of this subchapter, as a separate plan which is an excess benefit plan;

(9) which is established and maintained exclusively for substantial owners as defined in section 1322(b)(6) of this title;

(10) of an international organization which is exempt from taxation under the International Organizations Immunities Act;

(11) maintained solely for the purpose of complying with applicable workmen's compensation laws or unemployment compensation or disability insurance laws;

(12) which is a defined benefit plan, to the extent that it is treated as an individual account plan under paragraph (35)(B) of section 1002 of this title; or

(13) established and maintained by a professional service employer which does not at any time after September 2, 1974, have more than 25 active participants in the plan.

(c)(1) For purposes of subsection (b)(1) of this section, the term "individual account plan" does not include a plan under which a fixed benefit is promised if the employer or his representative participated in the determination of that benefit.

(2) For purposes of this paragraph and for purposes of subsection (b)(13) of this section.

(A) the term "professional service employer" means any proprietorship, partnership, corporation, or other association or organization (i) owned or controlled by professional individuals or by executors or administrators of professional individuals, (ii) the principal business of which is the performance of professional services, and

(B) the term "professional individuals" includes but is not limited to, physicians, dentists, chiropractors, osteopaths, optometrists, other licensed practitioners of the healing arts, attorneys at law, public accountants, public engineers, architects, draftsmen, actuaries, psychologists, social or physical scientists, and performing artists.

(3) In the case of a plan established and maintained by more than one professional service employer, the plan shall not be treated as a plan described in subsection (b)(13) of this section if, at any time after September 2, 1974, the plan has more than 25 active participants. (Pub. L. 93–406, title IV, § 4021, Sept. 2, 1974, 88 Stat. 1014.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1935, referred to in subsec. (b)(2), was formerly classified to sections 215

to 228 of Title 45, Railroads, and is set out as a note under the former sections with provisions relating to continuation and effect of such Act upon the enactment of the Railroad Retirement Act of 1937.

The Railroad Retirement Act of 1937, referred to in subsec. (b)(2), is act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended, which was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305, eff. Jan. 1, 1975. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974 and is set out as section 231 et seq. of Title 45, Railroads. For transitional provisions leading to coverage of the Railroad Retirement Act of 1974, see sections 201 to 210 of Pub. L. 93–445, set out as notes under section 231 of Title 45.

The International Organization Immunities Act, referred to in subsec. (b)(10), is title I of act Dec. 29, 1945, ch. 652, 59 Stat. 669, which is classified principally to section 288 et seq. of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 1103, 1114, 1322, 1323, 1341, 1343, 1344, 1363, 1365, 1381 of this title.

§ 1322. Benefits guaranteed.

(a) Subject to the limitations contained in subsection (b) of this section, the corporation shall guarantee the payment of all nonforfeitable benefits (other than benefits becoming nonforfeitable solely on account of the termination of a plan) under the terms of a plan which terminates at a time when section 1321 of this title applies to it.

(b)(1) Except to the extent provided in paragraph (8)—

(A) no benefits provided by a plan which has been in effect for less than 60 months at the time the plan terminates shall be guaranted under this section, and

(B) any increase in the amount of benefits under a plan resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates shall be disregarded.

(2) For purposes of this subsection, the time a successor plan (within the meaning of section 1321(a) of this title), has been in effect includes the time a previously established plan (within the meaning of section 1321(a) of this title) was in effect. For purposes of determining what benefits are guaranteed under this section in the case of a plan to which section 1321 of this title does not apply on September 3, 1974, the 60 month period referred to in paragraph (1) shall be computed beginning on the first date on which such section does apply to the plan.

(3) The amount of monthly benefits described in subsection (a) of this section provided by a plan, which are guaranteed under this section with respect to a participant, shall not have an actuarial value which exceeds the actuarial value of a monthly benefit in the form of a life annuity commencing at age 65 equal to the lesser of—

(A) his average monthly gross income from his employer during the 5 consecutive calendar year period (or, if less, during the number of calendar years in such period in which he actively participates in the plan) during which his gross income from that employer was greater than during any other such period with that employer determined by dividing $\frac{1}{12}$ of the sum of all such gross income by the number of such calendar years in which he had such gross income, or

(B) $750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 430 of Title 42) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974.

The provisions of this paragraph do not apply to non-basic benefits.

(4)(A) The actuarial value of a benefit, for purposes of this subsection, shall be determined in accordance with regulations prescribed by the corporation.

(B) For purposes of paragraph (3)—

(i) the term "gross income" means "earned income" within the meaning of section 911(b) of Title 26 (determined without regard to any community property laws),

(ii) in the case of a participant in a plan under which contributions are made by more than one employer, amounts received as gross income from any employer under that plan shall be aggregated with amounts received from any other employer under that plan during the same period, and

(iii) any non-basic benefit shall be disregarded.

(5) Notwithstanding paragraph (3), no person shall receive from the corporation for basic benefits with respect to a participant an amount, or amounts, with an actuarial value which exceeds a monthly benefit in the form of a life annuity commencing at age 65 equal to the amount determined under paragraph (3)(B) at the time of the last plan termination.

(6)(A) For purposes of this subchapter, the term "substantial owner" means an individual who—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of Title 26 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this subchapter an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) of this section (as limited under paragraph (3) of this subsection).

(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.

(7)(A) No benefits accrued under a plan after the date on which the Secretary of the Treasury issues notice that he has determined that any trust which is a part of a plan does not meet the requirements of section 401(a) of Title 26, or that the plan does not meet the requirements of section 404(a)(2) of Title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph does not apply if the Secretary subsequently issues a notice that such trust meets the requirements of section 401(a) of Title 26 or that the plan meets the requirements of section 404(a)(2) of Title 26 and if the Secretary determines that the trust or plan has taken action necessary to meet such requirements during the period between the issuance of the notice referred to in the preceding sentence and the issuance of the notice referred to in this sentence.

(B) No benefits accrued under a plan after the date on which an amendment of the plan is adopted which causes the Secretary of the Treasury to determine that any trust under the plan has ceased to meet the requirements of section 401(a) of Title 26 or that the plan has ceased to meet the requirements of section 404(a)(2) of Title 26, are guaranteed under this section unless such determination is erroneous. This subparagraph shall not apply if the amendment is revoked as of the date it was first effective or amended to comply with such requirements.

(8) Benefits described in paragraph (1) are guaranteed only to the extent of the greater of—

(A) 20 percent of the amount which, but for the fact that the plan or amendment has not been in effect for 60 months or more, would be guaranteed under this section, or

(B) $20 per month,

multiplied by the number of years (but not more than 5) the plan or amendment, as the case may be, has been in effect. In determining how many years a plan or amendment has been in effect for purposes of this paragraph, the first 12 months following the date on which the plan or amendment is made or first becomes effective (whichever is later) constitutes one year, and each consecutive period of 12 months thereafter constitutes an additional year. This paragraph does not apply to benefits payable under a plan unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter.

(c) The corporation is authorized to guarantee the payment of such other classes of benefits and to establish the terms and conditions under which such other classes of benefits are guaranteed as it determines to be appropriate. (Pub. L. 93–406, title IV, § 4022, Sept. 2, 1974, 88 Stat. 1016.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1301, 1305, 1306, 1321, 1343, 1344, 1346, 1361, 1381 of this title.

§ 1323. Contingent liability coverage.

(a) Insurance.

The corporation shall insure any employer who maintains or contributes to or under a plan to which section 1321 of this title applies against the payment of any liability imposed on him under subtitle D of this subchapter in the event of a termination of that plan. The corporation may develop arrangements with persons engaged in the business of providing insurance under which the insurance coverage described in the preceding sentence could be provided in whole or in part by such private insurers. In developing such arrangements the corporation shall devise a system under which risks are equitably distributed between the corporation and private insurers with respect to the classes of employers insured by each.

(b) Premium.

The corporation is authorized to prescribe and collect in such manner as it determines to be appropriate premiums for insurance offered under subsection (a) of this section. If the corporation requires all employers to which this subchapter applies to purchase coverage under this section, the provisions of section 1307(b) and (c) of this title apply to the collection of premiums under this section. The premiums shall be determined by the corporation and revised by it from time to time as may be necessary, and shall be chargeable at a rate sufficient to fund any payment by the corporation becoming necessary under such coverage.

(c) Election of private coverage.

If the corporation is, in its determination, able to develop a satisfactory arrangement with private insurers, within 36 months after September 2, 1974, to carry out the program of insurance authorized by this section in whole or in part, the corporation is authorized to require employers to elect coverage by such private insurance or by the corporation at such times and in such manner as the corporation determines necessary.

(d) Payment.

No payment may be made by the corporation under any insurance provided by it under this section unless the premiums on such insurance have been paid by the employer and the insurance has been in effect (with respect to any benefit) for more than 60 months. The corporation is authorized to prescribe conditions under which no payment will be made by it under any insurance offered under this section without regard to whether premiums for such insurance have been paid.

(e) Purchase of insurance from other sources not precluded; limits and terms; reinsurance or other premium.

Nothing in this section precludes the purchase by the employer of insurance from any other person, or limits the circumstances under which that insurance is payable, or in any way limits the terms and conditions of such insurance, except that the corporation may prescribe as a condition precedent to the purchase of such insurance the payment of a reinsurance premium or other reasonable fee under this section determined by the corporation to be necessary to assure the liquidity and adequacy of any fund or funds established to carry out the provisions of this section.

(f) Use of private industry guarantees, indemnities, or letters of credit.

In carrying out its duties under subsection (a) of this section to develop arrangements with private insurers the corporation shall consider as an alternative or as a supplement to private insurance the feasibility of using private industry guarantees, indemnities, or letters of credit. (Pub. L. 93–406, title IV, § 4023, Sept. 2, 1974, 88 Stat. 1019.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1305, 1306, 1307, 1362 of this title.

SUBTITLE C.—TERMINATIONS

§ 1341. Termination by plan administrator.

(a) Filing of notice that plan is to be terminated.

Before the effective date of the termination of a plan, the plan administrator shall file a notice with the corporation that the plan is to be terminated on a proposed date (which may not be earlier than 10 days after the filing of the notice), and for a period of 90 days after the proposed termination date the plan administrator shall pay no amount pursuant to the termination procedure of the plan unless, before the expiration of such period, he receives a notice of sufficiency under subsection (b) of this section. Upon receiving such a notice, the plan administrator may proceed with the termination of the plan in a manner consistent with this subtitle.

(b) Notice of sufficiency.

If the corporation determines that, after application of section 1344 of this title, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator of such determination as soon as practicable.

(c) Finding and notice of inability to determine that assets of plan are sufficient.

If, within such 90-day period, the corporation finds that it is unable to determine that, if the assets of the plan are allocated in accordance with the provisions of section 1344 of this title, the assets held under the plan are sufficient to discharge when due all obligations of the plan with respect to basic benefits, it shall notify the plan administrator within such 90-day period of that finding. When the corporation issues a notice under this subsection, it shall commence proceedings in accordance with the provisions of section 1342 of this title. Upon receiving a notice under this subsection, the plan administrator shall refrain from taking any action under the proposed termination.

(d) Extension of 90-day period.

The corporation and the plan administrator may agree to extend the 90-day period provided by this section by a written agreement signed by the corporation and the plan administrator before the expiration of the 90-day period, or the corporation may apply to an appropriate court (as defined in section 1342(g) of this title) for an order extending the 90-day period provided by this section. The 90-day period shall be extended as provided in the agreement or in any court order obtained by the corporation. The 90-day period may be further extended by subsequent written agreements signed by the corporation and the plan administrator made before the expiration of a previously agreed upon extension of the 90-day period, or by subsequent order of the court. Any extension may be made upon such terms and conditions (including the payment of benefits) as are agreed upon by the corporation and the plan administrator or as specified in the court order.

(e) Finding after authorized commencement of termination that plan is unable to pay basic benefits when due.

If, after the plan administrator has begun to terminate the plan as authorized by this section, the corporation or the plan administrator finds that the plan is unable, or will be unable, to pay basic benefits when due, the plan administrator shall notify the corporation of such finding as soon as practicable thereafter. If the corporation makes such a finding or concurs with the finding of the plan administrator, it shall institute appropriate proceedings under section 1342 of this title. The plan administrator terminating a plan shall furnish such reports to the corporation as it may require for purposes of its duties under this section.

(f) Amendment of plan with respect to which basic benefits are guaranteed.

For purposes of subsection (a) of this section, a plan with respect to which basic benefits are guaranteed shall be treated as terminated upon the adoption of an amendment to such plan, if, after giving effect to such amendment, the plan is a plan described in section 1321(b)(1) of this title.

(g) Petition to appropriate court for appointment of trustee.

Notwithstanding any other provision of this subchapter, a plan administrator or the corporation may petition the appropriate court for the appointment of a trustee in accordance with the provisions of section 1342 of this title if the interests of the participants and beneficiaries would be better served by the appointment of the trustee. (Pub. L. 93–406, title IV, § 4041, Sept. 2, 1974, 88 Stat. 1020.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1304, 1348 of this title.

§ 1342. Termination by corporation.

(a) Authority to institute proceedings to terminate a plan.

The corporation may institute proceedings under this section to terminate a plan whenever it determines that—

(1) the plan has not met the minimum funding standard required under section 412 of Title 26, or has been notified by the Secretary of the Treasury that a notice of deficiency under section 6212 of Title 26 has been mailed with respect to the tax imposed under section 4971(a) of Title 26,

(2) the plan is unable to pay benefits when due,

(3) the reportable event described in section 1343(b)(7) of this title has occurred, or

(4) the possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.

The corporation may prescribe a simplified procedure to follow in terminating small plans as long as that procedure includes substantial safeguards for the rights of the participants and beneficiaries under the plans, and for the employers who maintain such plans (including the requirement for a court decree under subsection (c) of this section). The corporation is authorized to pool the assets of such small plans for purposes of administration and such other purposes, not inconsistent with its duties to the plan participants and the employer maintaining the plan under this subchapter, as it determines to be required for the efficient administration of this subchapter.

(b) Appointment of trustee.

Whenever the corporation makes a determination under subsection (a) of this section with respect to a plan it may, upon notice to the plan, apply to the appropriate United States district court for the appointment of a trustee to administer the plan with respect to which the determinaion is made pending the issuance of a decree under subsection (c) of this section ordering the termination of the plan. If within 3 business days after the filing of an application under this subsection, or such other period as the court may order, the administrator of the plan consents to the appointment of a trustee, or fails to show why a trustee should not be appointed, the court may grant the application and appoint a trustee to administer the plan in accordance with its terms until the corporation determines that the plan should be terminated or that termination is unnecessary. The corporation may request that it be appointed as trustee of a plan in any case.

(c) Adjudication that plan must be terminated.

If the corporation has issued a notice under this section to a plan administrator and (whether or not a trustee has been appointed under subsection (b) of this section) has determined that the plan should be terminated, it may, upon notice to the plan administrator, apply to the appropriate United States district court for a decree adjudicating that the plan must be terminated in order to protect the interests of the participants and to avoid any further deterioration of the financial condition of the plan or any further increase in the liability of the fund. If the trustee appointed under subsection (b) of this section disagrees with the determination of the corporation under the preceding sentence he may intervene in the proceeding relating to the application for the decree, or make application for such decree himself. Upon granting a decree for which the corporation or trustee has applied under this subsection the court shall authorize the trustee appointed under subsection (b) of this section (or appoint a trustee if one has not been appointed under such subsection and authorize him) to terminate the plan in accordance with the provisions of this subtitle. If the corporation and the plan administrator agree that a plan should be terminated and agree to the appointment of a trustee without proceeding in accordance with the requirements of this subsection (other than this sentence) the trustee shall have the power described in subsection (d)(1) of this section and, in addition to any other duties imposed on the trustee under law or by agreement between the corporation and the plan administrator, the trustee is subject to the duties described in subsection (d)(3) of this section. Whenever a trustee appointed under this subchapter is operating a plan with discretion as to the date upon which final distribution of the assets is to be commenced, the trustee shall notify the corporation at least 10 days before the date on which he proposes to commence such distribution.

(d) Powers of trustee.

(1)(A) A trustee appointed under subsection (b) of this section shall have the power—

(i) to do any act authorized by the plan or this subchapter to be done by the plan administrator or any trustee of the plan;

(ii) to require the transfer of all (or any part) of the assets and records of the plan to himself as trustee;

(iii) to invest any assets of the plan which he holds in accordance with the provisions of the plan, regulations of the corporation, and applicable rules of law;

(iv) to limit payment of benefits under the plan to basic benefits or to continue payment of some or all of the benefits which were being paid prior to his appointment; and

(v) to do such other acts as he deems necessary to continue operation of the plan without increasing the potential liability of the corporation, if such acts may be done under the provisions of the plan.

If the court to which application is made under subsection (c) of this section dismisses the application with prejudice, or if the corporation fails to apply for a decree under subsection (c) of this section, within 30 days after the date on which the trustee is appointed under subsection (b) of this section, the trustee shall transfer all assets and records of the plan held by him to the plan administrator within 3 business days after such dismissal or the expiration of such 30-day period, and shall not be liable to the plan or any other person for his acts as trustee except for willful misconduct, or for conduct in violation of the provisions of part 4 of subtitle B of subchapter I of this chapter (except as

provided in subsection (d)(1)(A)(v) of this section). The 30-day period referred to in this subparagraph may be extended as provided by agreement between the plan administrator and the corporation or by court order obtained by the corporation.

(B) If the court to which an application is made under subsection (c) of this section issues the decree requested in such application, in addition to the powers described in subparagraph (A), the trustee shall have the power—

(i) to pay benefits under the plan in accordance with the allocation requirements of section 1344 of this title;

(ii) to collect for the plan any amounts due the plan;

(iii) to receive any payment made by the corporation to the plan under this subchapter;

(iv) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan, except to the extent that the corporation is an adverse party in a suit or proceeding;

(v) to issue, publish, or file such notices, statements, and reports as may be required by the corporation or any order of the court;

(vi) to liquidate the plan assets;

(vii) to recover payments under section 1345(a) of this title; and

(viii) to do such other acts as may be necessary to comply with this subchapter or any order of the court and to protect the interests of plan participants and beneficiaries.

(2) As soon as practicable after his appointment, the trustee shall give notice to interested parties of the institution of proceedings under this subchapter to determine whether the plan should be terminated or to terminate the plan, whichever is applicable. For purposes of this paragraph, the term "interested party" means—

(A) the plan administrator,

(B) each participant in the plan and each beneficiary of a deceased participant, and

(C) each employer who may be subject to liability under section 1362, 1363, or 1364 of this title.

(3) Except to the extent inconsistent with the provisions of this chapter, or as may be otherwise ordered by the court, a trustee appointed under this section shall be subject to the same duties as a trustee appointed under section 75 of Title 11, and shall be, with respect to the plan, a fiduciary within the meaning of paragraph (21) of section 1002 of this title and under section 4975(e) of Title 26 (except to the extent that the provisions of this subchapter are inconsistent with the requirements applicable under part 4 of subtitle B of subchapter I of this chapter and of such section 4975).

(e) Filing of application notwithstanding pendency of other proceedings.

An application by the corporation under this section may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

(f) Exclusive jurisdiction; stay of other proceedings.

Upon the filing of an application for the appointment of a trustee or the issuance of a decree under this section, the court to which an application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of bankruptcy and of a court in a proceeding under chapter 10 of Title 11. Pending an adjudication under subsection (c) of this section such court shall stay, and upon appointment by it of a trustee, as provided in this section such court shall continue the stay of, any pending bankruptcy, mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan or its property and any other suit against any receiver, conservator, or trustee of the plan or its property. Pending such adjudication and upon the appointment by it of such trustee, the court may stay any proceeding to enforce a lien against property of the plan or any other suit against the plan.

(g) Venue.

An action under this subsection may be brought in the judicial district where the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

(h) Compensation of trustee and professional service personnel appointed or retained by trustee.

(1) The amount of compensation paid to each trustee appointed under the provisions of this subchapter shall require the prior approval of the corporation, and, in the case of a trustee appointed by a court, the consent of that court.

(2) Trustees shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel in accordance with regulations prescribed by the corporation. (Pub. L. 93–406, title IV, § 4042, Sept. 2, 1974, 88 Stat. 1021.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(3), was in the original "this Act" meaning the Employee Retirement Income Security Act of 1974, Pub. L. 93–406, Titles I, III and IV of which enacted this chapter. For additional classifications of Pub. L. 93–406 to this Code, see Short Title note under section 1001 of this title.

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1104, 1303, 1304, 1305, 1307, 1341, 1344, 1347, 1348 of this title.

§ 1343. Reportable events.

(a) Notification that event has occurred.

Within 30 days after the plan administrator knows or has reason to know that a reportable event described in subsection (b) of this section has occurred, he shall notify the corporation that such event has occurred. The corporation is authorized to waive the requirement of the preceding sentence with respect to any or all reportable events with respect to any plan, and to require the notification to be made by including the event in the annual report made by the plan. Whenever an employer making contributions

under a plan to which section 1321 of this title applies knows or has reason to know that a reportable event has occurred he shall notify the plan administrator immediately.

(b) Enumeration of reportable events.

For purposes of this section a reportable event occurs—

(1) when the Secretary of the Treasury issues notice that a plan has ceased to be a plan described in section 1321(a)(2) of this title, or when the Secretary of Labor determines the plan is not in compliance with subchapter I of this chapter;

(2) when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased;

(3) when the number of active participants is less than 80 percent of the number of such participants at the beginning of the plan year, or is less than 75 percent of the number of such participants at the beginning of the previous plan year;

(4) when the Secretary of the Treasury determines that there has been a termination or partial termination of the plan within the meaning of section 411(d)(3) of Title 26, but the occurrence of such a termination or partial termination does not, by itself, constitute or require a termination of a plan under this subchapter;

(5) when the plan fails to meet the minimum funding standards under section 412 of Title 26 (without regard to whether the plan is a plan described in section 1321(a)(2) of this title) or under section 1082 of this title;

(6) when the plan is unable to pay benefits thereunder when due;

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 1322(b)(6) of this title if—

(A) such distribution has a value of $10,000 or more;

(B) such distribution is not made by reason of the death of the participant; and

(C) immediately after the distribution, the plan has nonforfeitable benefits which are not funded;

(8) when a plan merges, consolidates, or transfers its assets under section 1058 of this title, or when an alternative method of compliance is prescribed by the Secretary of Labor under section 1030 of this title; or

(9) when any other event occurs which the corporation determines may be indicative of a need to terminate the plan.

For purposes of paragraph (7), all distributions to a participant within any 24-month period are treated as a single distribution.

(c) Notification to corporation by Secretary of the Treasury.

The Secretary of the Treasury shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (4), or (5) of subsection (b) of this section occurs, or

(2) whenever any other event occurs which the Secretary of the Treasury believes indicates that the plan may not be sound.

(d) Notification to corporation by Secretary of Labor.

The Secretary of Labor shall notify the corporation—

(1) whenever a reportable event described in paragraph (1), (5), or (8) of subsection (b) of this section occurs, or

(2) whenever any other event occurs which the Secretary of Labor believes indicates that the plan may not be sound.

(Pub. L. 93-406, title IV, § 4043, Sept. 2, 1974, 88 Stat. 1024.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1345, 1365 of this title.

§ 1344. Allocation of assets.

(a) Order of priority of participants and beneficiaries.

In the case of the termination of a defined benefit plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) First, to that portion of each individual's accrued benefit which is derived from the participant's contributions to the plan which were not mandatory contributions.

(2) Second, to that portion of each individual's accrued benefit which is derived from the participant's mandatory contributions.

(3) Third, in the case of benefits payable as an annuity—

(A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least,

(B) in the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this subchapter (determined without regard to section 1322(b)(5) of this title), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 1322(b)(6) of this title did not apply.

For purposes of this paragraph, section 1321 of this title shall be applied without regard to subsection (c) thereof.

(5) Fifth, to all other nonforfeitable benefits under the plan.

(6) Sixth, to all other benefits under the plan.

(b) Adjustment of allocations; reallocations; mandatory contributions; establishment of subclasses and categories.

For purposes of subsection (a) of this section—

(1) The amount allocated under any paragraph of subsection (a) of this section with respect to any benefit shall be properly adjusted for any allocation of assets with respect to that benefit under a prior paragraph of subsection (a) of this section,

(2) If the assets available for allocation under any paragraph of subsection (a) of this section (other than paragraphs (5) and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) of this section are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

(A) If this paragraph applies, except as provided in subparagraph (B), the assets shall be allocated to the benefits of individuals described in such paragraph (5) on the basis of the benefits of individuals which would have been described in such paragraph (5) under the plan as in effect at the beginning of the 5-year period ending on the date of plan termination.

(B) If the assets available for allocation under subparagraph (A) are sufficient to satisfy in full the benefits described in such subparagraph (without regard to this subparagraph), then for purposes of subparagraph (A), benefits of individuals described in such subparagraph shall be determined on the basis of the plan as amended by the most recent plan amendment effective during such 5-year period under which the assets available for allocation are sufficient to satisfy in full the benefits of individuals described in subparagraph (A) and any assets remaining to be allocated under such subparagraph shall be allocated under subparagraph (A) on the basis of the plan as amended by the next succeeding plan amendment effective during such period.

(4) If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of Title 26 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a), 403(a), or 405(a) of Title 26, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) of this section shall be reallocated to the extent necessary to avoid such discrimination

(5) The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

(6) A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) of this section in accordance with regulations prescribed by the corporation.

(c) Increase or decrease in value of assets.

Any increase or decrease in the value of the assets of a plan occurring during the period beginning on the later of (1) the date a trustee is appointed under section 1342(b) of this title or (2) the date on which the plan is terminated is to be allocated between the plan and the corporation in the manner determined by the court (in the case of a court-appointed trustee) or as agreed upon by the corporation and the plan administrator in any other case. Any increase or decrease in the value of the assets of a plan occurring after the date on which the plan is terminated shall be credited to, or suffered by, the corporation.

(d) Distribution of residual assets; remaining assets.

(1) Any residual assets of a plan may be distributed to the employer if—

(A) all liabilities of the plan to participants and their beneficiaries have been satisfied,

(B) the distribution does not contravene any provision of law, and

(C) the plan provides for such a distribution in these circumstances.

(2) Notwithstanding the provisions of paragraph (1), if any assets of the plan attributable to employee contributions, remain after all liabilities of the plan to participants and their beneficiaries have been satisfied, such assets shall be equitably distributed to the employees who made such contributions (or their beneficiaries) in accordance with their rate of contributions. (Pub. L. 93–406, title IV, § 4044, Sept 2, 1974, 88 Stat. 1025.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 1103, 1104, 1108, 1304, 1341, 1342, 1346 of this title; title 26 section 4975.

§ 1345. Recapture of payments.

(a) Except as provided in subsection (c) of this section, the trustee is authorized to recover for the benefit of a plan from a participant the recoverable amount (as defined in subsection (b) of this section) of all payments from the plan to him which commenced within the 3-year period immediately preceding the time the plan is terminated.

(b) For purposes of subsection (a) of this section the recoverable amount is the excess of the amount determined under paragraph (1) over the amount determined under paragraph (2).

(1) The amount determined under this paragraph is the sum of the amount of the actual payments received by the participant within the 3-year period.

(2) The amount determined under this paragraph is the sum of—

(A) the sum of the amount such participant would have received during each consecutive 12-month period within the 3 years if the participant received the benefit in the form described in paragraph (3),

(B) the sum for each of the consecutive 12-month periods of the lesser of—

(i) the excess, if any, of $10,000 over the benefit in the form described in paragraph (3), or

(ii) the excess of the actual payment, if any, over the benefit in the form described in paragraph (3), and

(C) the present value at the time of termination of the participant's future benefits guaranteed under this subchapter as if the benefits commenced in the form described in paragraph (3).

(3) The form of benefit for purposes of this subsection shall be the monthly benefit the participant would have received during the consecutive 12-month period, if he had elected at the time of the first payment made during the 3-year period, to receive his interest in the plan as a monthly benefit in the form of a life annuity commencing at the time of such first payment.

(c)(1) In the event of a distribution described in section 1343(b)(7) of this title the 3-year period referred to in subsection (b) of this section shall not end sooner than the date on which the corporation is notified of the distribution.

(2) The trustee shall not recover any payment made from a plan after or on account of the death of a participant, or to a participant who is disabled (within the meaning of section 72(m)(7) of Title 26).

(3) The corporation is authorized to waive, in whole or in part, the recovery of any amount which the trustee is authorized to recover for the benefit of a plan under this section in any case in which it determines that substantial economic hardship would result to the participant or his beneficiaries from whom such amount is recoverable. (Pub. L. 93–406, title IV, § 4045, Sept. 2, 1974, 88 Stat. 1027.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1342 of this title; title 26 section 6511.

§ 1346. Reports to trustee.

The corporation and the plan administrator of any plan to be terminated under this subtitle shall furnish to the trustee such information as the corporation or the plan administrator has and, to the extent practicable, can obtain regarding—

(1) the amount of benefits payable with respect to each participant under a plan to be terminated,

(2) the amount of benefits guaranteed under section 1322 of this title which are payable with respect to each participant in the plan,

(3) the present value, as of the time of termination, of the aggregate amount of benefits payable under section 1322 of this title (determined without regard to section 1322(b)(5) of this title),

(4) the fair market value of the assets of the plan at the time of termination,

(5) the computations under section 1344 of this title, and all actuarial assumptions under which the items described in paragraphs (1) through (4) were computed, and

(6) any other information with respect to the plan the trustee may require in order to terminate the plan.

(Pub. L. 93–406, title IV, § 4046, Sept. 2, 1974, 88 Stat. 1028.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

§ 1347. Restoration of plans.

Whenever the corporation determines that a plan which is to be terminated, or which is in the process of being terminated, under this subtitle should not be terminated as a result of such circumstances as the corporation determines to be relevant, the corporation is authorized to cease any activities undertaken to terminate the plan, and to take whatever action is necessary and within its power to restore the plan to its status prior to the determination that the plan was to be terminated. In the case of a plan which has been terminated under section 1342 of this title the corporation is authorized in any such case in which the corporation determines such action to be appropriate and consistent with its duties under this subchapter, to take such action as may be necessary to restore the plan to its pretermination status, including, but not limited to, the transfer to the employer or a plan administrator of control of part or all of the remaining assets and liabilities of the plan. (Pub. L. 93–406, title IV, § 4047, Sept. 2, 1974, 88 Stat. 1028.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

§ 1348. Date of termination.

For purposes of this subchapter the date of termination is—

(1) in the case of a plan terminated in accordance with the provisions of section 1341 of this title, the date established by the plan administrator and agreed to by the corporation,

(2) in the case of a plan terminated in accordance with the provisions of section 1342 of this title, the date established by the corporation and agreed to by the plan administrator, or

(3) in the case of a plan terminated in accordance with the provisions of either section in any

case in which no agreement is reached between the plan administrator and the corporation (or the trustee), the date established by the court. (Pub. L. 93–406, title IV § 4048, Sept. 2, 1974, 88 Stat 1028.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1381 of this title.

SUBTITLE D.—LIABILITY

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1306, 1323, 1381 of this title.

§ 1361. Amounts payable by corporation.

The corporation shall pay benefits under a plan terminated under this subchapter subject to the limitations and requirements of subtitle B of this subchapter. Amounts guaranteed by the corporation under section 1322 of this title shall be paid by the corporation out of the appropriate fund. (Pub. L. 93–406, title IV, § 4061, Sept. 2, 1974, 88 Stat. 1029.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

§ 1362. Liability of employer.

(a) Employers covered.

This section applies to any employer who maintained a plan (other than a multiemployer plan) at the time it was terminated, but does not apply—

(1) to an employer who maintained a plan with respect to which he paid the annual premium described in section 1306(a)(2)(B) of this title for each of the 5 plan years immediately preceding the plan year during which the plan terminated unless the conditions imposed by the corporation on the payment of coverage under section 1323 of this title do not permit such coverage to apply under the circumstances, or

(2) to the extent of any liability arising out of the insolvency of an insurance company with respect to an insurance contract.

(b) Amount of liability.

Any employer to which this section applies shall be liable to the corporation, in an amount equal to the lesser of—

(1) the excess of—

(A) the current value of the plan's benefits guaranteed under this subchapter on the date of termination over

(B) the current value of the plan's assets allocable to such benefits on the date of termination, or

(2) 30 percent of the net worth of the employer determined as of a day, chosen by the corporation but not more than 120 days prior to the date of termination, computed without regard to any liability under this section.

(c) Net worth of employer.

For purposes of subsection (b)(2) of this section the net worth of an employer is—

(1) determined on whatever basis best reflects, in the determination of the corporation, the current status of the employer's operations and prospects at the time chosen for determining the net worth of the employer, and

(2) increased by the amount of any transfers of assets made by the employer determined by the corporation to be improper under the circumstances, including any such transfers which would be inappropriate under the Bankruptcy Act if the employer were the subject of a proceeding under that Act.

(d) Corporate reorganizations.

For purposes of this section the following rules apply in the case of certain corporate reorganizations:

(1) If an employer ceases to exist by reason of a reorganization which involves a mere change in identity, form, or place of organization, however effected, a successor corporation resulting from such reorganization shall be treated as the employer to whom this section applies.

(2) If an employer ceases to exist by reason of a liquidation into a parent corporation, the parent corporation shall be treated as the employer to whom this section applies.

(3) If an employer ceases to exist by reason of a merger, consolidation, or division, the successor corporation or corporations shall be treated as the employer to whom this section applies.

(e) Cessation of operations at one facility.

If an employer ceases operations at a facility in any location and, as a result of such cessation of operations, more than 20 percent of the total number of his employees who are participants under a plan established and maintained by him are separated from employment, the employer shall be treated with respect to that plan as if he were a substantial employer under a plan under which more than one employer makes contributions and the provisions of sections 1363, 1364, and 1365 of this title shall apply. (Pub. L. 93–406, title IV, § 4062, Sept. 2, 1974, 88 Stat. 1029.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (c)(2), is set out in Title 11, Bankruptcy.

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1342, 1363, 1364, 1367, 1368 of this title; title 26 section 404.

§ 1363. Liability of substantial employer for withdrawal.

(a) Plans under which more than one employer makes contributions.

Except as provided in subsection (d) of this section, the plan administrator of a plan under which more than one employer makes contributions—

(1) shall notify the corporation of the withdrawal of a substantial employer from the plan, within 60 days after such withdrawal, and

(2) request that the corporation determine the liability of such employer under this subtitle with respect to such withdrawal.

The corporation shall, as soon as practicable thereafter, determine whether such employer is liable for any amount under this subtitle with respect to the withdrawal and notify such employer of such liability.

(b) Computation of liability.

Except as provided in subsection (c) of this section, an employer who withdraws from a plan to which section 1321 of this title applies, during a plan year for which he was a substantial employer, and who is notified by the corporation as provided by subsection (a) of this section, shall be liable to the corporation in accordance with the provisions of section 1362 of this title and this section. The amount of such employer's liability shall be computed on the basis of an amount determined by the corporation to be the amount described in section 1362 of this title for the entire plan, as if the plan had been terminated by the corporation on the date of the employer's withdrawal, multiplied by a fraction—

(1) the numerator of which is the total amount required to be contributed to the plan by such employer for the last 5 years ending prior to the withdrawal, and

(2) the denominator of which is the total amount required to be contributed to the plan by all employers for such last 5 years.

In addition to and in lieu of the manner prescribed in the preceding sentence, the corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations. Any amount collected by the corporation under this subsection shall be held in escrow subject to disposition in accordance with the provisions of paragraphs (2) and (3) of subsection (c) of this section.

(c) Bond in lieu of payment of liability; 5-year termination period.

(1) In lieu of payment of his liability under this section the employer may be required to furnish a bond to the corporation in an amount not exceeding 150 percent of his liability to insure payment of his liability under this section. The bond shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury under sections 6 through 13 of Title 6. Any such bond shall be in a form or of a type approved by the Secretary including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(2) If the plan is not terminated within the 5-year period commencing on the day of withdrawal, the liability of such employer is abated and any payment held in escrow shall be refunded without interest to the employer (or his bond cancelled) in accordance with bylaws or rules prescribed by the corporation.

(3) If the plan terminates within the 5-year period commencing on the day of withdrawal, the corporation shall—

(A) demand payment or realize on the bond and hold such amount in escrow for the benefit of the plan;

(B) treat any escrowed payments under this section as if they were plan assets and apply them in a manner consistent with this subtitle; and

(C) refund any amount to the employer which is not required to meet any obligation of the corporation with respect to the plan.

(d) Alternate appropriate procedure.

The provisions of this subsection apply in the case of a withdrawal described in subsection (a) of this section, and the provisions of subsections (b) and (c) of this section shall not apply, if the corporation determines that the procedure provided for under this subsection is consistent with the purposes of this section and section 1364 of this title and is more appropriate in the particular case. Upon a showing by the plan administrator of a plan that the withdrawal from the plan by any employer or employers has resulted, or will result, in a significant reduction in the amount of aggregate contributions to or under the plan by employers, the corporation may—

(1) require the plan fund to be equitable allocated between those participants no longer working in covered service under the plan as a result of their employer's withdrawal, and those participants who remain in covered service under the plan;

(2) treat that portion of the plan funds allocable under paragraph (1) to participants no longer in covered service as a termination; and

(3) treat that portion of the plan fund allocable to participants remaining in covered service as a separate plan.

(e) Indemnity agreement.

The corporation is authorized to waive the application of the provisions of subsections (b), (c), and (d) of this section to any employer or plan administrator whenever it determines that there is an indemnity agreement in effect among all other employers under the plan which is adequate to satisfy the purposes of this section and of section 1364 of this title. (Pub. L. 93–406, title IV, § 4063, Sept. 2, 1974, 88 Stat. 1030.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1342, 1362, 1365, 1367, 1368 of this title; title 26 section 404.

§ 1364. Liability of employers on termination of plan maintained by more than one employer.

(a) This section applies to all employers who maintain a plan under which more than one employer makes contributions at the time such plan is terminated, or who, at any time within the 5 plan years preceding the date of termination, made contributions under the plan.

(b) The corporation shall determine the liability of each such employer in a manner consistent with section 1362 of this title except that the amount of the liability determined under section 1362(b)(1) of this title with respect to the entire plan shall be allocated to each employer by multiplying such amounts by a fraction—

(1) the numerator of which is the amount required to be contributed to the plan by each employer for the last 5 plan years ending prior to the termination, and

(2) the denominator of which is the total amount required to be contributed to the plan by all such employers for such last 5 years,

and the limitation described in section 1362(b)(2) of this title shall be applied separately to each employer. The corporation may also determine the liability of each such employer on any other equitable basis prescribed by the corporation in regulations. (Pub. L. 93–406, title IV, § 4064, Sept. 2, 1974, 88 Stat. 1031.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1304, 1342, 1362, 1363, 1367, 1368 of this title; title 26 section 404.

§ 1365. Annual report of plan administrator.

For each plan year for which section 1321 of this title applies to a plan, the plan administrator shall file with the corporation, on a form prescribed by the corporation, an annual report which identifies the plan and plan administrator and which includes—

(1) a copy of each notification required under section 1363 of this title with respect to such year, and

(2) a statement disclosing whether any reportable event (described in section 1343(b) of this title) occurred during the plan year.

The report shal be filed within 6 months after the close of the plan year to which it relates. The corporation shall cooperate with the Secretary of the Treasury and the Secretary of Labor in an endeavor to coordinate the timing and content, and possibly obtain the combination, of reports under this section with reports required to be made by plan administrators to such Secretaries. (Pub. L. 93–406, title IV, § 4065, Sept. 2, 1974, 88 Stat. 1032.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1362 of this title.

§ 1366. Annual notification to substantial employers.

The plan administrator of each plan under which contributions are made by more than one employer shall notify, within 6 months after the close of each plan year, any employer making contributions under that plan who is described in section 1301(a)(2) of this title that he is a substantial employer for that year. (Pub. L. 93–406, title IV, § 4066, Sept. 2, 1974, 88 Stat. 1032.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

§ 1367. Recovery of employer liability for plan termination.

The corporation is authorized to make arrangements with employers who are liable under section 1362, 1363, or 1364 of this title for payment of their liability, including arrangements for deferred payment on such terms and for such periods as the corporation deems equitable and appropriate. (Pub. L. 93–406, title IV, § 4067, Sept. 2, 1974, 88 Stat. 1032.)

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

§ 1368. Lien for liability of employer.

(a) Creation of lien.

If any employer or employers liable to the corporation under section 1362, 1363, or 1364 of this title neglect or refuse to pay, after demand, the amount of such liability (including interest), there shall be a lien in favor of the corporation upon all property and rights to property, whether real or personal, belonging to such employer or employers.

(b) Term of lien.

The lien imposed by subsection (a) of this section arises on the date of termination of a plan, and continues until the liability imposed under section 1362, 1363, or 1364 of this title is satisfied or becomes unenforceable by reason of lapse of time.

(c) Priority.

(1) Except as otherwise provided under this section, the priority of the lien imposed under subsection (a) of this section shall be determined in the same manner as under section 6323 of Title 26. Such section 6323 shall be applied by substituting "lien imposed by section 4068 of the Employee Retirement Income Security Act of 1974" for "lien imposed by section 6321"; "corporation" for "Secretary or his delegate"; "employer liability lien" for "tax lien"; "employer" for "taxpayer"; "lien arising under section 4068(a) of the Employee Retirement Income Security Act of 1974" for "assessment of the tax"; and "payment of the loan value is made to the corporation" for "satisfaction of a levy pursuant to section 6332(b)"; each place such terms appear.

(2) In the case of bankruptcy or insolvency proceedings, the lien imposed under subsection (a) of this section shall be treated in the same manner as a tax due and owing to the United States for purposes of the Bankruptcy Act or section 191 of Title 31.

(3) For purposes of applying section 6323(a) of Title 26 to determine the priority between the lien imposed under subsection (a) of this section and a Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of this subsection, notice of the lien imposed by subsection (a) of this section shall be filed in the same manner as under section 6323 (f) and (g) of Title 26.

(d) Civil action; limitation period.

(1) In any case where there has been a refusal or neglect to pay the liability imposed under section 1362, 1363, or 1364 of this title, the corporation may bring civil action in a district court of the United States to enforce the lien of the corporation under this section with respect to such liability or to subject any property, of whatever nature, of the employer, or in which he has any right, title, or interest to the payment of such liability.

(2) The liability imposed by section 1362, 1363, or 1364 of this title may be collected by a proceeding in court if the proceeding is commenced within 6 years after the date upon which the plan was terminated or prior to the expiration of any period for collection agreed upon in writing by the corporation and the employer before the expiration of such 6-year period. The period of limitations provided under this paragraph shall be suspended for the period the assets of the employer are in the control or custody of any court of the United States, or of any State, or of the District of Columbia, and for 6 months thereafter, and for any period during which the employer is outside the United States if such period of absence is for a continuous period of at least 6 months.

(e) Release or subordination.

If the corporation determines, with the consent of the board of directors, that release of the lien or subordination of the lien to any other creditor of the employer or employers would not adversely affect the collection of the liability imposed under section 1362, 1363, or 1364 of this title, or that the amount realizable by the corporation from the property to which the lien attaches will ultimately be increased by such release or subordination, and that the ultimate collection of the liability will be facilitated by such release or subordination, the corporation may issue a certificate of release or subordination of the lien with respect to such property, or any part thereof. (Pub. L. 93–406, title IV, § 4068, Sept. 2, 1974, 88 Stat. 1032.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (c)(2), is set out in Title 11, Bankruptcy.

EFFECTIVE DATE

Section effective on Sept. 2, 1974, with exceptions specified in sections 1381(b), (c) of this title, see section 1381(a) of this title.

SUBTITLE E.—EFFECTIVE DATE; SPECIAL RULES

§ 1381. Effective date; special rules.

(a) The provisions of this subchapter take effect on September 2, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, the corporation shall pay benefits guaranteed under this subchapter with respect to any plan—

(1) which is not a multiemployer plan,

(2) which terminates after June 30, 1974, and before September 2, 1974,

(3) to which section 1321 of this title would apply if that section were effective beginning on July 1, 1974, and

(4) with respect to which a notice is filed with the Secretary of Labor and received by him not later than 10 days after September 2, 1974, except that, for reasonable cause shown, such notice may be filed with the Secretary of Labor and received by him not later than October 31, 1974, stating that the plan is a plan described in paragraphs (1), (2), and (3).

The corporation shall not pay benefits guaranteed under this subchapter with respect to a plan described in the preceding sentence unless the corporation finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining the payment of benefits by the corporation under this subchapter or for the purpose of avoiding the liability which might be imposed under subtitle D if the plan terminated on or after September 2, 1974. The provisions of subtitle D do not apply in the case of such a plan which terminates before September 2, 1974. For purposes of determining whether a plan is a plan described in paragraph (2), the provisions of section 1348 of this title shall not apply, but the corporation shall make the determination on the basis of the date on which benefits ceased to accrue or on any other reasonable basis consistent with the purposes of this subsection.

(c)(1) Except as provided in paragraphs (2), (3), and (4), the corporation shall not pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates before January 1, 1978. Whenever the corporation exercises the authority granted under paragraph (2) or (3), the corporation shall notify the Committee on Education and Labor and the Committee on Ways and Means of the House of Representatives, and the Committee on Labor and Public Welfare and the Committee on Finance of the Senate.

(2) The corporation may, in its discretion, pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates after September 2, 1974 and before January 1, 1978, if—

(A) the plan was maintained during the 60 months immediately preceding the date on which the plan terminates, and

(B) the corporation determines that the payment by the corporation of benefits guaranteed under this subchapter with respect to that plan will not jeopardize the payments the corporation anticipates it may be required to make in connection with benefits guaranteed under this subchapter with respect to multiemployer plans which terminate after December 31, 1977.

(3) Notwithstanding any provision of section 1321 or 1322 of this title which would prevent such payments, the corporation, in carrying out its authority under paragraph (2), may pay benefits guaranteed under this subchapter with respect to a multiemployer plan described in paragraph (2) in any case in which those benefits would otherwise not be payable if—

(A) the plan has been in effect for at least 5 years,

(B) the plan has been in substantial compliance with the funding requirements for a qualified plan with respect to the employees and former employees in those employment units on the basis of which the participating employers have contributed to the plan for the preceding 5 years, and

(C) the participating employers and employee organization or organizations had no reasonable recourse other than termination.

(4) If the corporation determines, under paragraph (2) or (3), that it will pay benefits guaranteed under this subchapter with respect to a multiemployer plan which terminates before January 1, 1978, the corporation—

(A) may establish requirements for the continuation of payments which commenced before Janu-

ary 2, 1974, with respect to retired participants under the plan,

(B) may not, notwithstanding any other provision of this subchapter, make payments with respect to any participant under such a plan who, on January 1, 1974, was receiving payment of retirement benefits, in excess of the amounts and rates payable with respect to such participant on that date,

(C) may not make any payments with respect to benefits guaranteed under this subchapter in connection with such a plan which are derived, directly or indirectly, from amounts borrowed under section 1305(c) of this title, and

(D) shall review from time to time payments made under the authority granted to it by paragraphs (2) and (3), and reduce or terminate such payments to the extent necessary to avoid jeopardizing the ability of the corporation to make payments of benefits guaranteed under this subchapter in connection with multiemployer plans which terminate after December 31, 1977, without increasing premium rates for such plans.

(Pub. L. 93–406, title IV, § 4082, Sept. 2, 1974, 88 Stat. 1034.)

REFERENCES IN TEXT

This "subchapter" referred to in text was, in the original, this "title" meaning title IV of Pub. L. 93–406. Title IV of Pub. L. 93–406, in addition to enacting this subchapter, amended section 5108 of Title 5, Government Organization and Employees, sections 404 and 6511 of Title 26, Internal Revenue Code, and section 846 of Title 31, Money and Finance. References in this section to this "subchapter" must, therefore, be read as including the amendments to the sections outside this subchapter enumerated above.